

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

New Delhi this the 1st day of December, 1997. (17)

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI R. K. AHOOJA, MEMBER '(A)

1. O.A. NO. 2018/1997

Shri AnindyaSunder

... Applicant

-Versus-

Union of India & Ors.

... Respondents

Advocates : Shri S. G. Aney, Sr. Counsel with Mrs. Anita Shinde, for Applicant.

Shri R. P. Aggarwal with Shri S. M. Arif for Respondent No.1; Mrs. Shyamala Pappu, Sr. Counsel with Mrs. B. Rana, for Respondent No.2.

2. O.A. NO. 1608/1997

Shri R. H. Rao Bhalekar

... Applicant

-Versus-

Union of India & Ors.

... Respondents

Advocate : Shri V. C. Mahajan, Sr. Counsel with Shri M. Chopra & Shri Vishal Malik, for Applicant.

Shri R. P. Aggarwal with Shri S. M. Arif for Respondents 1 & 2; Mrs. Shyamala Pappu, Sr. Counsel with Mrs. B. Rana, for Respondent No.3.

1. To be referred to Reporter.

✓ Yes
KM
(K. M. Agarwal)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

NEW DELHI, THIS THE ^{9/12} DAY OF DECEMBER, 1997.

HON'BLE MR. JUSTICE K.M.AGARWAL, CHAIRMAN

HON'BLE MR. R.K.AHOOJA, AM.

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O.A.No.2018/97.

Shri AnindyaSunder
S/o Brahmajyoti Ghoshal,
Joint Chief Controller of Explosives,
R/o Charushree Apartment,
Khare Town,
Dharampeth, NAGPUR.

....APPLICANT.

(BY SHRI S.G.ANEY, SR. COUNSEL WITH MRS. ANITA SHINDE, COUNSEL)

Vs.

1. Union of India, through Secretary,
Department of Industrial Development,
Ministry of Industry, Udyog Bhavan,
NEW DELHI-110001.

2. Union Public Service Commission,
11, Dhaulpur House, Shahjahan Road,
NEW DELHI.

3. Shri B.C. Mandal,
Deputy General Manager,
Ordnance Factory,
Jawahar Nagar,
BHANDARA.

....RESPONDENTS.

(SHRI R.P.AGARWAL WITH SHRI S.M.ARIF FOR RESPONDENT NO.1,
MRS. SHYAMALA PAPPU, SR. COUNSEL WITH MRS.B.RANA, COUNSEL
FOR RESPONDENT No.2)

O.A. No.1608/97.

Shri Ramesh Hanumant Rao Bhalekhar
S/o Late Hanumant Rao Ramdas Bhalekar
R/o 74, Atrey Layout, Rana Partap Nagar,
NAGPUR.

....APPLICANT.

(BY SHRI V.C. MAHAJAN, SR. COUNSEL WITH SHRI M.CHOPRA AND
VISHAL MALIK, COUNSEL)

Vs.

1. Union of India (through Secretary)
Ministry of Industry,
Government of India,
Udyog Bhavan, New Delhi.

2. Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,
North Block, Central Secretariat,
NEW DELHI (through Secretary)

3. Union Public Service Commission,
No.11, Dhaulpur House, Shahjahan Road,
New Delhi.

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4. Shri B.C. Mandal,
Deputy General Manager,
Ordnance Factory,
Jawahar Nagar, Bhandara,
Maharashtra.

....RESPONDENTS.

(SHRI R.P.AGGARWAL WITH SHRI S.M.ARIF FOR RESPONDENTS 1 & 2, MRS. SHYAMALA PAPPU, SR. COUNSEL WITH MRS. B.RANA, COUNSEL FOR RESPONDENT No.3)

ORDER

JUSTICE K.M.AGARWAL, CHAIRMAN:

On more or less identical facts and similar grounds, these two applications under Section 19 of the Administrative Tribunals Act, 1985 have been filed for quashing the recommendations of the Union Public Service Commission (in short, 'U.P.S.C') and restraining the official respondents from appointing Shri B.C. Mandal (3rd respondent in O.A. 2018/97 and 4th respondent in O.A. No.1608/97) to the post of Chief Controller of Explosives, pursuant to the impugned recommendations of the U.P.S.C. A further prayer is made in both the applications for consideration of the names of applicants therein for promotion to the said post of Chief Controller of Explosives.

2. Briefly stated, the applicants in the two applications entered into the services of the official respondents as Inspectors of Explosives on two different dates, promoted as Controller of Explosives, further promoted as Deputy Chief Controller of Explosives and Joint Controller of Explosives on ad hoc basis and then on regular basis with effect from 7.5.1997. On 31.12.1994, a vacancy was created in the post of Chief Controller of Explosives on retirement of one Shri Mukherjee who was holding that post on ad hoc basis. The Department of Explosives (Group 'A' and Group 'B' posts) Recruitment Rules, 1982, as amended upto 1985, (in short, "1982 Recruitment Rules"), required the post of Chief Controller of Explosives to be filled by promotion/transfer on deputation (including short-term contract) failing which by direct recruitment. The eligibility requirements for recruitment by promotion/deputation transfer as mentioned in column 11 of the 1982 Recruitment Rules were as follows:

"Promotion /Transfer on deputation (including short-term contract)

- 1) Officers of the Central/State Government/ Semi-Governments, Statutory or Autonomous Organisations-
 - a) i) holding analogous posts; or
 - ii) with 5 years service in posts in the scale of Rs.1800-2250/- or equivalent; or

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iii) with 7 years service in posts in the scale of Rs.1500-2000/- or equivalent; and

b) Possessing the educational qualifications & experience prescribed for direct recruits under Col.7

2) The departmental Jt. Chief Controller of Explosives with 5 years' regular service in the grade failing which Jt. C.C.E. with 7 years' combined regular service in the grades of the Jt. C.C.E. & Dy. Chief Controller of Explosives will also be considered and in case he is selected for appointment to the post, the post shall be deemed to have been filled by Promotion. "(Period of deputation/contract including period of deputation in another ex-cadre post held immediately preceding this appointment in the same organisation/Department shall ordinarily not exceed 5 years)"

(Amended vide Notification No.A-12018/1/81-E.IV/Vol.III dated 29/8/83 published in Gazette of India, Part II, Sec. 3, Sub-Sec. (i) dated 17/09/83 G.S.R. No.681, dated 29/08/83.)"

After retirement of Shri Mukherjee and by order dated 1.2.1995, the applicant in O.A. No.2018/97 Shri Ghosal was invested with the powers of the Chief Controller of Explosives and declared as Head of Department under rule 13(3) of the Delegation of Financial Powers Rules, 1978. So far so good. The grievance of the applicants in the two O.As started with the decision of the Government to fill up the vacancy of Chief Controller of Explosives by transfer on deputation, as manifested by their Memo dated 26.8.1996, on fresh eligibility conditions mentioned in Annexure I to the said Memo, which were as follows:

"(a) Officers of the Central/State Governments/Semi-Governments, Statutory or Autonomous Organisations-

- i) holding analogous posts; or
- ii) With 2 years regular service in posts in the scale of Rs.5100-6300/- or equivalent; or
- iii) with 3 years' regular service in posts in the scale of Rs.4500-5700; and

(b) possessing the following qualifications:

- (i) Master's Degree in Chemistry from a recognised University or equivalent.

OR

Degree in Chemical Engineering/Technology from a recognised University/Institution or equivalent.

(ii) 15 years' experience in a supervisory capacity in storage/handling

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or manufacture of Explosives or refining of Petroleum or in compressed gases.

(iii) Administrative experience."

It appears, pursuant to Memo dated 26.8.1996 of the Government, applications were invited for the post of Chief Controller of Explosives. The applicants in the two O.As, as also Shri B.C. Mandal (respondent No.3 in O.A. No.2018/97 and respondent No.4 in O.A. No.1608/97) applied for the post. The applicants were departmental candidates, whereas Shri B.C. Mandal was a candidate from Ordnance Factory, Bhandara. The applicants in the two O.As were left out of consideration on the ground that they did not fulfil the eligibility conditions laid down in Annexure I to Government Memo dated 26.8.1996. Shri Mandal also did not fulfil all the eligibility conditions, but after relaxing those conditions, he was selected by the U.P.S.C. for the said post of Chief Controller of Explosives, giving cause to the applicants for filing the aforesaid two O.As for the said reliefs. It may be mentioned that by their letter dated 21.8.1996, addressed to the Secretary, U.P.S.C., the Government expressed its intention to review the 1982 Recruitment Rules and accordingly sought its concurrence to the draft Recruitment Rules sent to them after approval by the Department of Personnel & Training and the Department of Pension and P.W. In columns 11 and 12 of the schedule to the proposed new Recruitment Rules, the method of recruitment and eligibility conditions were mentioned as follows:

Column 11 : "By promotion failing which by transfer on deputation (including short-term contract) and failing both by direct recruitment."

Column 12: "Promotion:

- 1) Joint Chief Controller of Explosives with 3 years regular service in the grade; or
- 2) JCCE with 8 years combined service in the grades of JCCE & DCCE with at least 2 years minimum service in the grade of Joint CCE.

Transfer on Deputation (including short-term contract):

- a) (i) holding analogous posts on a regular basis.

OR

- (ii) Holding posts in the pay scale of Rs.5100-6300 with 2 years regular service in the Grade;

OR

(iii) holding posts in the pay scale of Rs.4500-5700/- with 3 years regular service in the grade;

and

(b) Possessing the qualifications and experience prescribed for direct recruitments under Col.8, (The departmental officers in the feeder grade who are in direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion). Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same organisation."

3. Shri B.C. Mandal, (3rd respondent in O.A. No.2018/97 and 4th respondent in O.A. No.1608/97) did not put in appearance before us, though served. The other respondents in both the O.As have filed their counters and are contesting the claim of the applicants.

4. After hearing the learned counsel for the contesting parties and perusing the record, one thing is clear to us that the respondents did not follow either the 1982 Recruitment Rules, or the proposed new Recruitment Rules in so far as the method of recruitment was concerned. Under the 1982 Rules, the method was "By promotion/transfer on deputation (including short-term contract) failing which by direct recruitment." Under the proposed new Rules, it was "By promotion failing which by transfer on deputation (including short-term contract) and failing both by direct recruitment." Without disclosing any reason, the Government decided "to fill up the post of Chief Controller of Explosives... on transfer on deputation (including short-term contract) basis from amongst suitable officers." The eligibility conditions were different from those mentioned in 1982 Rules, but more or less identical to those proposed in the draft Rules. (See Government Memorandum dated 26.8.1996 filed as Annexure XIII in O.A. 2018/97). In these circumstances, it was argued by the learned counsel for the applicants in the two applications that the selection of Shri B.C. Mandal was vitiated. It was further argued that Shri B.C. Mandal did not fulfil eligibility conditions either under the 1982 Rules, or under the draft new Rules, but selected after giving relaxation in those eligibility conditions. This clearly indicated arbitrariness and favouritism in the matter of his selection.

Yours

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5. The learned counsel for the contesting respondents refuted the allegations and submitted that with the revision of pay scale of the post of Chief Controller of Explosives, it became necessary to change the method of recruitment and the eligibility conditions. As no departmental candidate with requisite qualifications and experience was available, it was decided to fill up the vacancy by transfer on deputation basis from amongst suitable officers. Except Shri B.C.Mandal, (the 3rd respondent in O.A. 2018/97 and the 4th respondent in O.A. 1608/97), there was no other candidate for appointment by transfer on deputation and, therefore, he was selected after giving some relaxation in eligibility conditions. It was argued that neither of the applicants in the two applications was eligible for the post either under the 1982 Rules, or under the draft Rules and, therefore, their grievance was misconceived.

6. We find that before publication of the draft Recruitment Rules in the Official Gazette, or their enforcement, the contesting respondents proceeded to make selection on the basis of those Rules. It would appear from the letter dated 21.8.1996, (Annexure XII in O.A 2018/97), of the Government that the draft Rules were sent to the UPSC for its concurrence on that very date. Soon thereafter on 26.8.1996, the Government issued its Office Memorandum, (Annexure XIII), containing the following proposal, (i.e., its decision):

"The undersigned is directed to say that it is proposed to fill up the post of Chief Controller of Explosives under this Ministry (Dept. of Industrial Development) in the scale of Rs.5900-6700 on transfer on deputation (including short-term contract) basis from amongst suitable officers. The eligibility conditions and job descriptions of the post are given in the Annexure."

This would mean that without awaiting the concurrence of the UPSC and in quick haste, the Government decided to fill up the vacancy in the manner indicated in its aforesaid letter dated 26.8.1996. The letter does not show why it was proposed to fill up the vacancy by transfer on deputation basis. The learned counsel for the contesting respondents submitted that it was because no departmental candidate with requisite qualifications was available for being promoted to the said post. Assuming it to be plausible explanation, candidates with requisite qualifications for appointment by transfer on deputation basis were also not available as per returns filed by the respondents and, therefore, by relaxing the rules, Shri B.C. Mandal was selected. Why similar relaxation could not be given to the applicants, has not been explained.

Yours

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The Memo dated 26.8.1996, or the Annexure annexed with it, did not say that the Government reserved any right to relax the eligibility conditions. The draft Recruitment Rules were not brought into force by the time the relaxation was given. We also do not know, if the draft Rules invested the Government with any power to relax, because the schedule under the draft Recruitment Rules alone was filed in the case. Rule 5 of the 1982 Rules invested the Government with such power. Rule 5 reads as follows:

"5. Power to relax: Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, and in consultation with the Union Public Service Commission, relax any of the provisions of these rules in respect of any class or category of persons." (Emphasis supplied).

Powers under rule 5 of the 1982 Recruitment Rules could not be exercised for relaxing the provisions of any draft Rules, because the power was restricted in relation to the provisions of 1982 Rules, as would be evident from the words emphasized.

7. In the light of our discussion aforesaid, we are of the view that the selection of Shri B.C. Mandal, (3rd respondent in O.A. 2018/97 and 4th respondent in O.A. 1608/97), for the post of Chief Controller of Explosives is vitiated and, therefore, it is liable to be quashed. As the draft Recruitment Rules were not in force on the date of initiation of the impugned process of selection, (nor do they appear to have been enforced so far), we feel that the contesting respondents deserve to be commanded to proceed to fill up the vacancy on the basis of the 1982 Recruitment Rules, as also to consider the names of the two applicants in these applications in the light of the method of recruitment and eligibility conditions mentioned in columns 10 and 11 of the schedule to the 1982 Rules.

8. We may say that we are deliberately avoiding to express any opinion about the eligibility or otherwise of the applicants for the post of Chief Controller of Explosives under the 1982 Rules, because it was a disputed question between the parties and leave to the contesting respondents to decide the question at the time of making the selection. They shall also be at liberty to decide if it was advisable to exercise the power of relaxation under Rule 5 of the 1982 Rules in case none of the applicants is found to

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possess the requisite qualifications for the post.

9. In the result, these applications succeed and are hereby allowed. The selection of Shri B.C. Mandal, (3rd respondent in O.A.2018/97 and 4th respondent in O.A. 1608/97), for the post of Chief Controller of Explosives is quashed and the contesting respondents are directed to proceed to fill up the vacancy on the basis of the 1982 Recruitment Rules, as amended upto 1985, as also to consider the names of the two applicants in these applications in the light of the method of recruitment and eligibility conditions mentioned in columns 10 and 11 of the schedule to the 1982 Rules.

10. In the circumstances of the case, there shall be no order as to costs in any of these applications.


(K.M.AGARWAL)
CHAIRMAN


(R.K.AHOOJA)
MEMBER (A)