

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 578/1994

(14)

New Delhi, this 27th day of August, 1999

Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)
Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastray, Member(A)

1. A. Vasu Babu
361-B, J&K Pocket
Dilshad Garden, Delhi
2. A.K. Sinha
ASW/CCW
AIR, Itanagar
3. M. Sridhar
ASW/CCW
AIR, Hyderabad
4. Rajesh Sharma
ASW/CCW
AIR, Dibrugarh

.. Applicants

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

versus

Union of India, through

1. Secretary
Ministry of I&B
Shastri Bhavan, New Delhi
2. Director General
AIR, New Delhi
3. Chief Engineer(C)-I
Civil Construction Wing
PTI Building, New Delhi

.. Respondents

(By Shri S.M. Arif, Advocate)

ORDER(oral)

By Reddy, J. -

Heard the learned counsel for the applicants and the respondents. Applicants are aggrieved by the inaction of the respondents in not amending/incorporating in the Recruitment Rules of AIR Civil Construction Wing (Group A & B posts) Recruitment Rules, 1988 by a 'note' to the effect that if an officer appointed to any post in the service is considered for the purpose of promotion to a higher post all persons

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senior to him in the grade shall also be considered notwithstanding that they may not have rendered the requisite years of service. The background facts of the case are as under:

2. Applicants are Assistant Engineers(Civil)/Assistant Surveyor of Works(Civil) (AEC/ASoWC, for short) in the office of the respondents who have been appointed by direct recruitment. The next stage of promotion for them is Executive Engineer(Civil)/Surveyor of Works(Civil) (EEC/SoWC, for short). R/Rules for promotion stipulate 8 years regular service in the grade of AEC/ASoWC and possessing a degree in Civil Engineering. Promotions have been made according to these R/Rules to the post of EEC/SoWC. In DoPT's OM dated 18.3.88 and 23.10.89 guidelines have been issued for revision of R/Rules according to which when juniors in the seniority list have completed the required eligibility period as per the R/Rules, all the seniors are entitled to be considered for promotion to the next higher grade. These guidelines were not followed by the respondents in the matter of promotion. The grievance of the applicants is that seniors have been left out for promotion on the mere ground that they have not completed the prescribed eligibility condition. To avoid discrimination respondents have been asked to make suitable amendment in the R/Rules but for unexplained reason the respondents have not taken any action to amend the R/Rules in accordance with the guidelines referred to above or to follow the guidelines. Thus the guidelines which are meant to be followed by the departments, were disregarded. Applicants therefore seek a direction to the respondents to amend the R/Rules in accordance with the abovesaid guidelines or give suitable directions.

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3. In the reply filed by the respondents the stand taken is that these instructions are mere guidelines in nature and were left to the Ministries concerned to make provisions while framing or amending the original R/Rules for a particular post or group of posts. Further it is averred in the counter reply that they are under active consideration by the Government. They also state that these guidelines are applicable for promotion on regular basis only. Since no regular vacancies are available and no regular promotions are being made, there could be no prejudice to the applicant. It was also averred that seniority alone cannot be a factor for promotion. Eligibility as per the R/Rules irrespective of his seniority is the basic criteria for promotion to be followed.

4. It is not in dispute that under the R/Rules, AEC/ASoWC should have 8 years of qualifying service to acquire eligibility for promotion to the post of EEC/SoWC. The OM dated 18.3.88 issued by DoPT is a consolidated order comprising all guidelines to several departments. Para 3.1.2 is relevant which is extracted below:

"It may so happen that in some cases of promotion, the senior officers would not have completed the required service whereas the juniors would have completed the prescribed eligibility condition for promotion. In such cases, seniors will be left out from consideration for the higher post. To avoid such a situation, a suitable note may be inserted in the r/rules so that the seniors who have completed the probation period, are also be considered where the juniors who have completed the requisite service are being considered".

5. The abovesaid instructions were reiterated in OM dated 23.10.89 and all the departments were to re-examine/amend the R/rules by way of inserting a note to the effect as stated above. Even then no action has been taken by the

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respondents. The counter was filed in 1994 wherein it was stated that the matter was under consideration of the Government, but even ~~until~~ today no action has been taken by the respondents. It cannot be disputed that in the matter of promotion, R/rules have to be strictly complied with. Respondents cannot ignore R/rules on the ground that certain guidelines have been issued by DoPT. It is true that these guidelines are issued in the interest of ~~all~~ the employees in general. But in our view, they remain in the realm of guidelines only so long as the R/Rules occupy the field. In the absence of R/Rules, it can be said that the instructions and guidelines have to be followed.

6. Learned counsel for the applicants submits that in view of the lethargy of the respondents, the applicants are subjected to severe discrimination from employees of other departments where a 'Note' has been inserted incorporating the guidelines and the inaction of the respondents would be violative of the equality guaranteed under Article 14 of the Constitution. It is true that as the applicants being seniors are left out from consideration it may cause serious hardship and ~~harm~~burning to them. It is also true that certain other departments amended the R/Rules but can it be said that applicants' rights are ~~being~~ infringed due to inaction of the respondents? Each department has got its own R/Rules and the employees' service conditions in the particular department are governed by their R/Rules. No employee can legitimately make a grievance that R/Rules of his department ~~should be~~ ^{are not} in parity with that of another department. It is left to the administrative wisdom to draft the R/Rules and it is trite law that courts should restrain from interference with the service conditions of the

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employees. We do not therefore find any merits in the contention that the applicants are subjected to discrimination.

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7. In the case of R.Prabha Devi & Ors. v. GoI JT 1988(1) SC 488, it has been held as under:

"..Eligibility condition has to be fulfilled by the SOs including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post..."

8. Hence it can not also be said that the applicants' rights are infringed. There are no merits in the case. The OA is liable to dismissed. It should ^{however} be noted that other departments have followed the guidelines by inserting it in the relevant R/rules. In the counter also it has been averred, as back as in 1994, that it was under active consideration by the respondents.

9. In the circumstances, we direct the respondents to consider and take ^{appropriate} action forthwith as the matter was pending since 1994. The OA is dismissed subject to the above observations. No costs.

Shanta P -

(Smt. Shanta Shastry)
Member(A)

V.Rajagopala Reddy

Vice Chairman(J)

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