

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1312/2000

New Delhi this the 12th day of December, 2000. (5)

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Shri Surjit Kumar Kalyan
S/o Shri Sadhu Ram
R/o H.No/1381, Sector 12, R.K.Puram
New Delhi.

... Applicant

(By Shri Rama Krishna, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of
Defence
South Block, New Delhi.
2. Engineer in Chief
Military Engineer Services Department
Army Headquarters
Delhi.

... Respondents

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

O R D E R (ORAL)

Shri S.A.T. Rizvi:

The applicant in this case, who happens to be a Scheduled Caste candidate, has been working as an Assistant Architect in the respondents' set up from 1987. He is seeking promotion to the rank of Architect on the basis of the Recruitment Rules framed by the respondents. Aforesaid Rules provide that an Assistant Architect becomes eligible for promotion after 8 years of regular service. The applicant has completed more than 12 years of service and is, therefore, according to the Recruitment Rules liable to be considered for promotion. The applicant's grievance is that notwithstanding the aforesaid provision, he has not been considered for promotion so far.

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2. The learned counsel for the respondents has placed reliance on the aforesaid Recruitment Rules framed in 1988 which provide that for promotion to the rank of Architect, an Assistant Architect should possess 8 years' regular service in the grade and should be registered with the Council of Architecture. Admittedly, the applicant is not registered with the Council of Architecture. On this basis alone, the learned counsel for the respondents has claimed that the applicant cannot be considered for promotion to the rank of Architect. (6)

3. During the course of arguments, our attention has been drawn to the respondents' letter dated 1.12.1978 which deals with re-designation of certain posts in Architecture Cadre. The said letter, we find, stipulates that such of the Architects as are not registered with the Council of Architecture will be re-designated as Senior Technical Officer. Likewise, the Assistant Architects not having registration will be designated as Technical Officer. Despite this decision taken by the respondents, the applicant has been designated as Assistant Architect throughout and in the All India seniority list of Assistant Architects issued on 1.4.1988, the applicant is listed at Sl.No.2. Clearly, the respondents have not taken care to redesignate the members of the staff on the Architectural side in terms of the aforesaid letter of 1.12.1978. The learned counsel for the applicant contends that it is not the choice of the applicant to give himself a designation different from

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the one given by the department and he, therefore, remained unconcerned with the aspect of re-designation. According to him, it is the respondents who should have re-designated the applicant as Technical Officer which they have failed to do.

4. In so far as the question of promotion is concerned, we find that, strictly speaking, in terms of the existing Recruitment Rules aforesaid, it is not possible to consider the case of the applicant neither as Assistant Architect nor as Technical Officer. Under the aforesaid Rules, there is no mention of the rank of Technical Officer for promotional purposes and, therefore, applicant's promotion from the rank of Technical Officer to the rank of Senior Technical Officer is simply not covered by the Recruitment Rules in question. In regard to the question of promotion to the rank of Senior Technical Officer, if that were to be permissible, the learned counsel for the respondents tells us that there is no post available in that rank. As a matter of fact, according to him, such a post can never exist and that is why the Recruitment Rules have not provided for any possibility of promotion of Technical Officers to the rank of Senior Technical Officers. Incidentally, this would mean that such among the Assistant Architects working with the respondents as of now as are in fact Technical Officers in point of fact in terms of the re-designation letter can never be considered for

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promotion and the doors of promotion are closed on them. We have some hesitation in accepting this position.

5. We have carefully perused the provisions of the Recruitment Rules with a view to finding out for ourselves as to whether Technical Officers left out for ever as aforesaid can be considered for promotion to the rank of Senior Technical Officers, more particularly because ^{the} cadre of the Technical Officers admittedly is a dying cadre and only two persons are now left in that cadre. In column 8 of the Recruitment Rules which lays down educational and other qualifications for direct recruits, Note No.1 provides as follows:-

"Qualifications are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified."

Note No.2 reads as under:-

"The qualification regarding experience is/are relaxable at the discretion of the Union Public Service Commission in the case of candidates belonging to Scheduled Castes and Scheduled Tribes, if at any stage of selection, the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them."

The aforesaid Note No.1 appears to provide for sufficient powers available to the Union Public Service Commission to relax any of the qualifications laid down in column 8 if in the opinion of that

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Commission, a candidate happens to be well-qualified. Now, one of the qualifications laid down in the said column is "should be registered with council of Architecture." We are inclined to think that the Union Public Service Commission could as well relax the aforesaid condition of registration with the council of Architecture depending on the circumstances of a case. The learned counsel for the respondents' argument that note No.1 relate to the qualifications No.(i) in column 8 and similarly the note No.2 aforesaid relates to the qualifications No.(ii) laid down in the same column is not very convincing. We find that Note No.2 does not broadly and in general terms relate to the qualification No. (ii) aforesaid which is "7 years experience in profession." Instead what the said Note No.2 in question provides is a dispensation in favour of the Scheduled Castes and Scheduled Tribes and the same does not provide for a general dispensation meant for all. Viewed in this light, we are unable to agree with the learned counsel for the respondents that the aforesaid Notes No.1 and 2 have to be read in the way he has suggested. We thus conclude that in the case of the applicant also the Union Public Service Commission could consider relaxing the condition of compulsory registration with the Council of Architecture.

6. Rule 6 of the aforesaid Recruitment Rules provides for power of relaxation. The same reads as under:

"Where the Central Government is of opinion that it is necessary or expedient so to do, it may by orders for reasons to be

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recorded in writing and in consultation with the Union Public Service Commission relax any of the provisions of these rules with respect to any class or category of persons."

7. We are convinced that in the circumstances of this case and having particular regard to the fact that only two persons are now left in the dying cadre of Technical Officers (still ^{officially} designated as Asstt. Architects) and ^{the} applicant in this OA is a Scheduled Caste officer, the respondents should be willing to move the Union Public Service Commission to consider granting the request of relaxation in the case of the applicant. Such relaxation, if granted, will apply also to the other person left out who also happens to be a Scheduled Caste officer.

8. The learned counsel for the applicant tells us that the applicant in this case was appointed in 1987 but that was before the aforesaid Recruitment Rules came into force. Had the aforesaid Rules not come into force, the applicant as well as the others similarly situated might have become eligible for promotion to a higher rank in the normal course. However, the Rules promulgated, though in 1988 but after the applicant was appointed as Assistant Architect, have prevented his promotion by creating conditions we have already adverted to in the preceding paragraphs. This situation further reinforces our conviction that a way has to be found to provide for the promotion of the applicant by, as already mentioned in the above paragraph, directing

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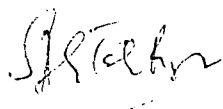
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the respondents to make a specific proposal for the consideration of the Union Public Service Commission under Rule 6 of the aforesaid Recruitment Rules.

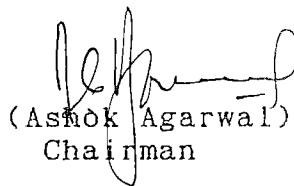
9. In the background of the above discussion, the OA is allowed and disposed of with the following direction to respondent No.1:-

Respondent No.1 shall frame a specific proposal for securing the promotion of the applicant from the rank of Technical Officer to the rank of Senior Technical Officer or from the rank of Assistant Architect to that of Architect by relaxing the relevant conditions of the Recruitment Rules of 1988 and submit the same for the consideration of the Union Public Service Commission under Rule 6 of the Recruitment Rules. The respondent No.1 will move in the matter expeditiously and he will in any case submit the aforesaid proposal for consideration of the Union Public Service Commission in two months' time from the date of receipt of a copy of this order.

The OA is disposed of in the aforesaid terms with no order as to costs.



(S.A.T. Rizvi)
Member (A)



(Ashok Agarwal)
Chairman

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