

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1905/2000
M.A.NO.2271/2000

Wednesday, this the 18th day of April, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

(10)

Railway Board Secretariat
Service Group 'B' Officers
Association.

Through

1. Shri S.M.Sharma
General Secretary,
2. Shri R.S.Shukla,
Section Officer (Security) E,
Rail Bhawan,
New Delhi.
3. Shri Madan Mohan Rai,
Section Officer/Estt. (D&A),
Rail Bhawan,
New Delhi.
4. Shri P.C.Verma
Section Officer, TG-IV,
Rail Bhawan,
New Delhi.

...Applicants.

(By Advocate: Shri B.S.Mainee)

VERSUS

Union of India through

1. The Chairman,
Railway Board,
Ministry of Railways,
Rail Bhawan, Raisina Road,
New Delhi.
2. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.

...Respondents

(By Advocates: Shri E.X.Joseph & Shri Rajinder Khatter)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, Member (A):-

The applicant-association which consists of Group
'B' officers of the Railway Board Secretariat Service

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(RBSS) prays for a direction to the respondents to consider their promotion to Group "A" Service (Junior Scale) in respect of vacancies arising in 1998-99 onward against the 50% quota earmarked for such officers. The OA has been contested by the respondents who have filed a reply. A rejoinder has been filed the applicants.

2. Heard the learned counsel on either side and have perused the material placed on record.

3. According to the applicants, four vacancies in the Junior Scale Group "A" arose in 1998-99 which had to be filled in accordance with the Indian Railway Personnel Service (Recruitment) Rules, 1975 (for short "IRPS RRs, 1975). 50% of the aforesaid vacancies are, in accordance with the said RRs, required to be filled by promoting Group "B" officers with at least three years' service in the grade. The selections are to be made on merit. According to the learned counsel appearing in support of the OA, the aforesaid posts must be filled in accordance with the aforesaid RRs of 1975 which were in force when the aforesaid vacancies arose and which are still in force. He places reliance on the judgement rendered by the Hon'ble Supreme Court in the case of Y.Y.Rangaiah Vs. J.Sreenivasa Rao, reported as (1983) 3 SCC 284. The Supreme Court had, in that case, held that the existing vacancies were required to be filled up as per the rules in existence prior to the date of the amended rules. The Supreme Court had in the same case further held that the mere fact that rules came to be amended subsequently does not empower the Government not

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to consider the persons who were eligible prior to the date of amendment. The learned counsel has pleaded that similar decisions have been made by the Courts in several cases and, therefore, the respondents have no option but to consider promoting the applicants to the Junior Scale of Group "A" service wholly in accordance with the existing RRs of 1975. (2)

4. The learned counsel appearing for the respondents has made a detailed reference to the recommendations made by the 5th CPC with regard to the restructuring of the RBSS. We have perused the reply filed by the respondents and find that a number of proposals have been made by the 5th CPC to promote the legitimate interests of the officers of Group 'B' service. However, the same Commission has also, after careful consideration, recommended that the induction of RBSS Officers into IRPS should not be allowed, and the aforesaid recommendation has already been accepted by the Railway Board on 4.4.1997. Based on the same, amendments to the existing recruitment rules were processed and approved by the Railway Board on 26.5.1999. The said proposal for amendment has been approved by the UPSC on 17.2.2000. The aforesaid amendments are, however, yet to be notified. The UPSC's approval has become available well before the DPC met in September, 2000 to make recommendations for promotions against the aforesaid promotion quota vacancies pertaining to the examination year, 1998. Consistently with the aforesaid position with regard to the amendment of the existing RRs, it has

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been decided not to earmark any slot for the Group 'B' officers.

(3)

5. In support of his contention, the learned counsel appearing for the respondents has placed reliance on the case of Dr. K. Ramulu and Another vs. Dr. S. Suryaprakash Rao and Others, reported as 1997 SCC (L&S) 625. We have perused the aforesaid judgement and find that the same deals with the matter of promotion of a Veterinary Assistant Surgeon (VAS) in A.P. Animal Husbandry Department. The VAS had filed an OA seeking a direction for the preparation of a panel of candidates for promotion as Assistant Director under Rule 4 of the A.P. Subordinate Service Rules. The Tribunal had in that case directed the respondent-Government to prepare and operate the panel for the years 1995-96 for promotion to the post of Assistant Director (AD). That decision of the Tribunal was called in question and the matter was taken to the Supreme Court. The contention raised before the Supreme Court was that the Government had the power to revise its policy of appointment and appointments were required to be made in accordance with the revised policy. The direction given by the Tribunal was contrary to the policy decision taken by the Government, namely, to reconsider the policy of promotion in service and to make fresh rules in place of the existing rules. In view of this, the contention was raised that the Tribunal had committed a manifest error in directing the Government to prepare, finalise and operate the panel for the years 1995-96 for promotion as AD. Taking note of the decision rendered by the Supreme Court in Y.V. Rangaiah's case

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(supra), the Court in the aforesaid case held that as a proposition of law, there could be no dispute in regard to the decision taken in Rangaiah's case. However, the Supreme Court proceeded to examine the question whether the ratio in Rangaiah's case would apply to the facts of the case before them in Dr. K. Ramulu's case (supra). Referring to the decision rendered in Rangaiah's case, the Supreme Court noted that the fact in that case was that the concerned authority had merely amended the rules and had applied the amended rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the rules. The Supreme Court went on to note that it had followed the ratio laid down in Rangaiah's case in several decisions but observed that in none of those cases, a situation which has arisen in the case under their consideration, namely, Ramulu's case, had come up for consideration. The appeals filed in the aforesaid case were accordingly allowed by the Supreme Court and the decision of the Tribunal was set aside. The learned counsel for the respondents has submitted that in the present case, a conscious decision not to fill the aforesaid vacancies in accordance with the existing RRs has been taken by the competent authority, namely, Railway Board, as already stated in an earlier paragraph. Hence, the ratio of the aforesaid Ramulu's case finds full application in the present OA. More specially, since Rangaiah's case was duly noticed by the Supreme Court in the aforesaid Ramulu's case.

6. The learned counsel appearing in support of the OA made further submissions placing reliance on the OM

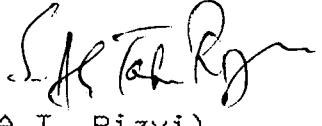
dated 10.4.1989 issued by the DOPT. We have perused the same. We find that the DOPT has issued consolidated instructions for the consideration of DPCs, providing, (6)
inter alia, that "...A vacancy shall be filled in accordance with the recruitment rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to recruitment rules normally have only prospective application, the existing vacancy should be filled as per the recruitment rules in force." (emphasis supplied). We note that the DOPT themselves have, in what has been reproduced above, clearly mentioned that amendments to RRs will normally have only prospective application. This implies that in situation other than normal situations, it would be possible to deviate from the aforesaid position and accordingly to apply amended rules retrospectively. We also note that the decision taken by the Railway Board not to fill the vacancies in question in accordance with the existing RRs is a policy decision taken by them and they are competent to take such decisions. This Tribunal is not expected to interfere with the policy decisions taken by the Government, barring rare cases of malafide, arbitrary exercise of authority or for violation of Articles 14 & 16 of the Constitution. No error of the kind referred to is manifest in the policy decision taken by the Railway Board.

7. For all the reasons brought out in the preceding paragraphs, we find merit in the plea advanced by the

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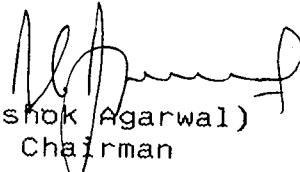
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learned counsel for the respondents. Accordingly, the OA
fails and is dismissed without any order as to costs.


(S.A.T. Rizvi)

Member (A)

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(Ashok Agarwal)

Chairman

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