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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1302/ 1989
T.A. No.

DATE OF DECISION 2nd Aug. 89

Shri R.K. Chawla — Applicant (s)

Dr. D.C. Vohra — Advocate for the Applicant (s)

Versus

Union of India — Respondent (s)

Mrs. Raj Kumari Chopra — Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.Srinivasan, Member (A)

The Hon'ble Mr. T.S. Oberoi, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? Yes

JUDGEMENT
(delivered by Hon'ble Shri P.Srinivasan,Member).

This application has come up before us for admission. Counsel for both parties, however, addressed detailed arguments both on the admissibility and the merits of the application. We, therefore, propose to dispose of the application itself by this order.

2. This application presents some intriguing features and concerns an area of activity which does not normally figure in disputes that come up for adjudication before this Tribunal. We must, at the outset, confess that it has not been an easy task for us to define the nature of the dispute in this application, particularly with reference to the competence of this Tribunal to deal with the matter. Moreover, the basic facts involved in the case have been the subject of so much controversy between the parties

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that it is not easy to say what they are and without that, it is impossible to determine the legal rights of the parties to the dispute. With this handicap, we now proceed to deal with the application.

3. Dr. D.C. Vohra, learned counsel appears for the applicant and Mrs. Raj Kumari Chopra, learned Central Government Standing Counsel, assisted by two senior officers of the Ministry of External Affairs, Government of India (hereinafter referred to as 'the Ministry'), who are the respondents in this case, appear for the respondents.

4. It would appear that in consultation with the different Universities concerned, the Government of India devised a scheme for reservation of seats in the M.B.B.S. course in different medical colleges in the country for which candidates would be selected by the Ministry of Health and Family Welfare. The Ministry of Health and Family Welfare, in its turn, allots some of the reserved seats to the Ministry of External Affairs which is required to nominate its candidates every year. For being nominated to one of these seats, a candidate has to fulfil certain conditions of eligibility which, to the extent that they are relevant for the purpose of the present application, were as follows:-

(i) The father of the candidate should be a Government of India official serving in an Indian Mission abroad, for one year on the date of nomination.

(ii) The candidate should be studying abroad and should have passed her/his qualifying examination from abroad.

(iii) The mark-sheet of the candidate seeking admission to a medical course in one of the reserved seats should be available at the time

of the meeting of the Selection Committee, which is usually held in the last week of June every year.

5. The Ministry issued a circular letter dated 29th March, 1989 to all its Missions abroad calling for applications from eligible candidates to reach the Welfare Officer of the Ministry by the 15th May, 1989 at the latest. The said circular letter narrated that "the candidates for the above course are selected according to their inter se merit and the Ministry reserves the right to decide this mode of fair selection on merits. They must have secured aggregate of 50 per cent of marks in English, Physics, Chemistry and Biology in the qualifying examination". It was also clarifed that "the fact that a student has applied for admission to a seat through the Ministry is no guarantee that he or she will be selected/admitted thereto and it is, therefore, in his/her own interest to apply to various educational institutions in India for admission against the open seats on the basis of merit".

6. The applicant is an official of Indian Foreign Service (B) currently working as an Attache in the Embassy of India at Washington, USA. In pursuance of the circular letter referred to above, his daughter, Miss Suchi Chawla, duly sent an application to the Welfare Officer of the Ministry for one of the reserved seats. There is no dispute that she fulfilled the conditions of eligibility. The Selection Committee constituted by the Ministry considered all applications (22 applications) of children of Indian officials working in Indian Missions abroad and graded them in the order of their relative merit. The Ministry had to nominate candidates for

five seats allotted to it. When this application was filed, the applicant apprehended that his daughter would not figure among the first five candidates in the order of merit nominated for the said five seats. It has now been ascertained that the applicant's daughter was placed sixth in the order of merit by the Selection Committee and the first five candidates have been issued letters of allotment of seats while Miss Suchi Chawla was placed at number 1 in the waiting list. In the event of any of the five candidates not availing of the seat allotted to him/her, the first of such seats would go to Miss Suchi Chawla. In this application, the applicant has challenged the very basis of selection made by the Selection Committee and contends that on the basis of marks obtained by his daughter in standard XII, she was more meritorious than the first five candidates to whom seats have already been allotted. While none of the said five candidates or their parents has been made a respondent in this application, the applicant contends that the basis of assessing the relative merits of the candidates adopted by the Selection Committee was erroneuous and violative of Articles 14 and 16 of the Constitution.

7. The first question that naturally arises in this case is whether the dispute raised herein appropriately falls within the jurisdiction of this Tribunal. We invited the views of the parties on this question. Mrs. Raj Kumari Chopra, learned counsel for the respondents, contends that it does not concern a service matter even though the applicant himself is a Government servant and, therefore, this Tribunal is not competent to deal with it. Dr. D.C. Vohra, learned counsel for the applicant, on the other hand, contends with equal vehemence, that the

subject-matter of the application is, indeed, a service matter and that, therefore, this Tribunal is competent to deal with it.

8. As we have already indicated, it has not been easy for us to decide the question of jurisdiction in this case. The jurisdiction, powers and authority of this Tribunal have been set out in Section 14 of the Administrative Tribunals Act, 1985 (the Act). It would be useful to extract here sub-section (i) of the said Section, which is relevant for our present purposes:-

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal. (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning recruitment to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or

(ii) a person (not being a member of an All India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian (not being a member of an All India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation (or society) owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal

of the Central Government for such appointment.

(Explanation. - For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references to a Union territory.)"

9. It is common ground that thepresent case does not fall within clause (a) because the issue raised here has nothing to do with recruitment or matters concerning recruitment to any civil post under the Government. Nor does clause (c) have any application here because the applicant is not a person whose services have been placed at the disposal of the Central Government by a State Government or a local body or corporation. Again, sub-clause (i) and sub-clause (iii) of clause (b) have no application here either. We have, therefore, to consider the question of jurisdiction here with reference to sub-clause (ii) of clause (b). Paraphrasing the said sub-clause, we are required to decide whether the subject-matter of the present dispute would constitute a service matter concerning a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union and pertaining to the service of such person in connection with the affairs of the Union. Since the applicant is a member of a civil service and is also working in that capacity under the Union Government, any dispute raised by him which relates to service matters pertaining to his service in connection with the affairs of the Union, would fall to be considered by this Tribunal. What we are required to examine here, therefore, is whether the subject-matter of the dispute raised in this application is (i) a service matter and if so, (ii) whether it pertains to the service of the applicant in connection with the affairs of the Union.

10. We take up first the question whether the subject-matter of the dispute pertains to the service of the applicant in connection with the affairs of the Union. Obviously, the applicant in his capacity as a civil servant of the Government of India is governed by the general rules of service like the Fundamental Rules, Supplementary Rules, Central Civil Services (Conduct) Rules, Central Civil Services (Classification, Control & Appeal) Rules and so on. He would also be governed by special rules applicable to officials of the Indian Foreign Service Group 'B'. If any of the conditions of service set out in these Rules is violated, he would have cause for complaint and could rightly come before this Tribunal. It is also settled law that in addition to rules promulgated under Article 309 of the Constitution, conditions of service can also be regulated by executive orders issued from time to time in so far as such orders do not conflict with the Rules made under Article 309 or with any Article of the Constitution. In the present case, under a scheme evolved by the Government of India, some seats in medical colleges were reserved for children of Government officials working in Indian Missions abroad. Can we say that reservation of seats in colleges for children of Government officials form part of the conditions of service of such officials and, therefore, pertain to their service in connection with the affairs of the Union ? Now, speaking generally, an employer does not take the responsibility for the upbringing or the education of the children of his employees or of maintenance of their families by him. However, the Government as a model employer concerned about the welfare of its employees, has framed rules, inter alia, for reimbursement of school fees payable by Government officials for the education of

their children under certain conditions. Here also, it is upto the Government servant concerned, either to educate his children or not, and if he decides to educate them, it is again for him to choose the educational institutions to which his children should go or the course of education which they should undergo. In other words, the Government only ensures that a Government servant has the wherewithal to educate his children in the manner he may choose by giving him additional allowance for the purpose. If the Government gives such financial help, can we say that the Government is also bound to help its officials in obtaining admission for their children in institutions of education ? Here again, by setting up central schools all over the country, Central Engineering Colleges and so on, where some preference has to be given in the matter of admission to children of Central Government employees, the Government of India has sought to promote the welfare of its officials: at the same time, the Government does not normally interfere with the admission policy of these institutions, thereby leaving it to the children of Government servants to gain admission on their own. Thus, normally, admission to educational institutions of children of Government servants as such is not the concern of Government which only seeks to provide more and more facilities for the purpose in a general way. In the present case, the Government has gone even further by reserving certain seats in medical colleges for children of its employees serving abroad though under the normal standards of employer-employee relationship in Government service, it is not obliged to do so. All that the Government did by obtaining some seats in medical colleges for which it could nominate children of its officials serving abroad was to extend a helping hand to its employees in the

matter. If tomorrow, this scheme of reservation is given up ~~amended~~ and children of Government employees serving abroad are left to their own resources in the matter of gaining admission to medical colleges, no Government servant can say that his right as a Government servant has been infringed and raise a grievance on that count. Thus, it seems to us that the action of the Government in getting seats in medical colleges reserved for candidates to be nominated by it out of deserving children of its officials serving abroad, is something ex-gratia and does not create an enforceable right in favour of its employees. On this view, the facility extended by the Government to its employees cannot be treated as a condition of their service such that the Government servants can make a grievance of the manner in which the grant of the facility is actually regulated. In any case, it would be stretching things too far to hold that allotment of a seat in a medical college for the child of a Government servant is a matter pertaining to his service in the Government.

11. We now turn to another aspect of the matter, which is, no doubt, closely connected with what we have already examined. Is the subject matter of the present dispute a service matter? For this, we have to refer to the definition of this expression in section 3 (q) of the Act:

> "3. Definitions.- In this Act, unless the context otherwise requires,-
>
> xxx xxx xxxx xxx
>
> (q) "service matters", in relation to a person, means all matters relating to the condition of his service in connection with the affairs of the Union or of any State or of local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects-
>
> (i) remuneration (including allowances), pension

and other retirement benefits;

(ii) tenure, including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;

We have earlier expressed the view that the action of the Government in obtaining seats from medical colleges for children of its officials is an ex-gratia action and cannot be described as a condition of service of its employees. If we are right in this view, the first part of the definition extracted above, namely, "all matters relating to the condition of his service" would have no application to the facts of the present case. Further, the question raised in this application does not fall under sub-clauses (ii) to (iv) extracted above. Can it be brought under sub-clause (v), namely, "any other matter whatsoever" ? Primarily, the expression "service matters" is defined to mean "all matters relating to the conditions of his service in connection with the affairs of the Union...." The sub-clauses following this definition merely enumerate the various situations or matters that would be covered by it. In other words, the expression "any other matter whatsoever" is used to mean any matter not specifically enumerated in sub-clauses (i) to (iv) but yet falling under the main definition, namely, "all matters relating to the conditions of his service". If a particular matter sought to be raised does not constitute a condition of service, in the first instance, it would not obviously be covered by any of the sub-clauses (iv) to (v). Sub-clause (v) is, no doubt, a residuary sub-clause but its scope is also limited by the main definition, i.e.

it has to be a condition of service in connection with the affairs of the Union. We are, therefore, of the view that the subject-matter of the dispute does not fall within the definition of the expression "service matters" appearing in section 3 (q) of the Act. For this reason itself, this application deserves to be dismissed. But since counsel on both sides addressed us in detail on the merits of the application, we proceed to deal with that aspect of the matter also.

12. The contention of Dr. Vohra, appearing on behalf of the applicant, is that the applicant's daughter had, according to the certificate issued by the school in which she was studying in the USA, obtained 98 % marks in the qualifying examination, while the five other candidates, who were placed above her, had secured lower per centages. The applicant's daughter had obtained 'A' grade in two of the subjects, namely, Physics and English and B + in the remaining two subjects namely, Chemistry and Biology. The Annandale High Schod, Annandale, Virginia, USA, in which she studied had issued a certificate to this effect and had also clarified that 'A' grade meant 94 to 100 per cent of the total marks while B+ meant 90 to 93 per cent. Adopting the mean between this range of marks, the applicant should have been treated as having obtained 97 % marks in two subjects and 91.5%marks in each of the other two subjects and on this basis, the overall per centage of marks obtained by her should have been worked out at 94.2. As against this, the Selection Committee had adopted 91 per cent overall in her case thereby bringing her down below the five others. In fact, Dr. Vohra argued, in Physics in which the applicant was given A grade, she had taken an advance placement course for which 5 more per centage points should have been added. If that were done, her marks in

Physics for the purpose of assessing her merit, should have been 101.5 per cent. Similarly, she had taken an advance placement course in Biology also in which she obtained B+ grade: adding 5 per-centage points to her normal grade marks, her marks in Biology should have been taken as 97 per cent. If that had been done, her average marks in the qualifying examination should have been 98 per cent and not 91 per cent, as adopted by the Selection Committee and she would have had to be placed first in the order of merit among all eligible candidates. Of the five candidates placed above her by the Selection Committee, some had passed the qualifying examination under the Indian Central Secondary Education Board system or under the British system of education and in their cases, the Selection Committee had added 20 per centage points to their grade marks. In other words, if a candidate obtained A grade in the British or Indian system which was equivalent to 70 per cent and above, he or she was given an additional 20 marks when evaluating his or her relative merit. In this way, there was a built-in advantage for candidates who had qualified under the British or Indian system vis-a-vis candidates like the applicant's daughter, who had passed the qualifying examination under the American system. This amounted to discrimination against the applicant's daughter. Thus, not only were the marksof the applicant's daughter as certified by her school, reduced but the marks of other candidates from British or Indian schools had been increased and thereby injustice had been caused to the applicant's daughter.

13. On the other hand, the officials of the Ministry, who assisted their counsel, Mrs. Raj Kumari Chopra, explained that the method of grading adopted by the Selection Committee in the instant case had been applied to all the candidates in the field uniformly and

was the same as that followed in the past years also. It had been ascertained by the Ministry that marking in American schools was more liberal than in schools functioning under the British or the Indian system. Taking into account this fact, it had been decided that 20 per centage points should be added to the marks otherwise attributable to a candidate coming from a British or Indian school system. So far as the applicant's daughter was concerned, the respondents do not agree that the overall marks attributable to her should be 98 per cent or even 94.2 %. The weightage claimed by the applicant's daughter for having undertaken the advance placement course was unacceptable because candidates coming from the British and Indian schools had also done advance courses known as 'A' level courses. If special credit was given to the applicant's daughter for having done an advance placement course, similar credit would have to be given to other candidates from the British or Indian systems who had qualified in 'A' level and the result would be the same. Further, the highest grade of achievement in the qualifying examination in American schools was A+ and not A. No doubt, the Annandale High School from which the applicant's daughter qualified, had issued a certificate that the grade A+ was not used in the grading system in that school or any other public school in Fairfax County. According to the respondents, they had to adopt a uniform standard of grading of all candidates coming from the American school system where the prevalent grading included A+ for the range of marks from 97 to 100 %, A for the range between 94 to 96 %, A-minus for the range between 90 and 93 % and B+ for the range between 86 to 89 per cent. Thus, the overall

marks of the applicant's daughter who had obtained A grade in two subjects and B+ in two subjects, worked out to 91 % while all the five candidates above her got more than that. A certificate issued by the same school namely, Annandale High School, in respect of another candidate who applied in 1988 was not found to be totally correct and so, it was submitted, the respondents could not accept the certificate of the school in this case as representing the correct position. Even if the Fairfax County or the Annandale High School did use the A+ grade, the respondents had to adopt the grading system generally followed in the U.S.A. as a whole, and not in just one County, which comprised eight grades from A+ to D when making comparisons between candidates who had qualified from different school systems all over the world. That, according to the respondents, was a more reliable method than going by what each individual school certified. It was not as if the selection committee adopted a different system of grading during this year alone just to keep out the applicant's daughter. It had, as a matter of policy and after considerable discussion, come to the conclusion that (i) marks of candidates coming from the British and Indian schools abroad should be raised by 20 per cent and (ii) when crediting marks to candidates from the American system, it should be done on the eight grade system (between A+ and D), adopting the mean marks in each grade for the purpose of assessment. There was no arbitrariness or any intention to harm any particular individual but to devise a uniform system to accomplish the difficult task of inter se comparison on merit of students coming from different systems of education.

14. The detailed arguments of both the parties as set out above, will immediately show that it is not easy to come to a decision. The comparative evaluation of the merits of students coming from different systems of education is a complicated matter which it is difficult, if not ~~possible~~ impossible, for laymen to undertake. It is for experts in the field of education familiar with the marking systems in examinations in different parts of the world to decide how candidates from different schools in the world should be evaluated. From the explanation offered by the respondents, we are satisfied that the respondents have indeed made an earnest attempt to arrive at a proper evaluation of the relative merits of the candidates in the field. We are also satisfied that there has been no favouritism, nor any intention to put down any particular candidate. No system of evaluation of this kind can be perfect. All that we can ask for is that the respondents make an honest assessment which we think, they have done. The system of evaluation adopted in this case is the same as that adopted in past years also and has been applied to all candidates in the field in the instant case. We cannot quarrel with the assertion of the respondents that marking in American schools is more liberal than in British and Indian schools and that, therefore, marks obtained under the British and Indian systems have to be raised by 20 per cent to make a fair comparison so long as this method ~~system~~ is uniformly applied in all cases. Nor can we quarrel with the assertion that a uniform system of evaluation has to be applied for children coming from American schools and recognising eight grades from A+ to D. What an individual county or a school in USA may say about the grading system adopted by it, may not

P. Shah

necessarily be binding on the respondents when they are evolving a sytem of evaluation of performance based on the practice in the country as a whole. We are unable, therefore, to hold that there was any arbitrariness in fixing the marks of the applicant's daughter on the basis that the range of grade A in two subjects obtained by her was between 94 and 96 per cent and grade B+ between 86 to 89 per cent. To repeat what we have said more than once, we are not experts in the field of education and we can only see whether any element of arbitrariness or wanton discrimination has entered the picture which does not seem to be the case here. We are, therefore, of the view that we should not interfere with the decision of the respondents in this behalf.

15. Before parting with this application, we may also mention that during the hearing, we suggested to the senior officials of the Ministry, who appeared before us, that they should try and obtain one more seat from the Ministry of Health and Family Welfare and allot it to the applicant's daughter, who is the next in the order of merit. We were told on the date of last hearing that the Ministry has indeed made a reference to the Ministry of Health and Family Welfare and are awaiting their reply. We were also told that the Ministry of Health and Family Welfare might be in a position to allot an extra seat to the Ministry if some States to which reference has been made do not claim the seats reserved for them. We

hope the Ministry will continue its efforts and eventually succeed in it and if they do, the applicant's daughter will also be able to obtain a seat. We leave the matter at that.

The application is, therefore, rejected at the stage of admission itself with the above observations, leaving the parties to bear their own costs.

(T.S. Oberoi)
Member (J)

(P.Srinivasan)
Member (A)