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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1449/89 1989
T.A. No.

DATE OF DECISION 19.9.1989

Shri D. S. Rana Applicant (s)

Shri B. S. Mainee Advocate for the Applicant (s)

Versus
Union of India & Others Respondent (s)

Shri Inderjeet Sharma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. S.P. Mukerji, Vice-Chairman (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble Shri P.K. Kartha)

The applicant, who is presently working as Inspector of Works (Afforestation) in Northern Railways, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) The letter of the respondents dated 2.6.89 (Annexure A-1) insofar as it amounts to alteration of the recruitment rules and minimum qualifications as prescribed vide letter dated 28.8.1988 (Annexure A-2), be quashed;
- (ii) the respondents be directed to call only those candidates who had applied upto 30.9.88 and had fulfilled the requisite

qualifications as per letter dated 28.8.1988 for promotion to the post of Assistant Engineer (Horticulture) by selection;

- (iii) the respondents be directed not to reserve the post of Assistant Engineer (Horticulture) for Scheduled Caste and Scheduled Tribe candidates because this is the only one post in the cadre; and
- (iv) the respondents be directed to promote the applicant on ad hoc basis till regular selection is made.

2. The pleadings in this case are complete. After going through the records carefully and hearing the learned counsel for both the parties, we are of the opinion, that this case could finally be disposed of at the admission stage itself.

3. The case of the applicant is that according to the unamended recruitment rules, one of the conditions of eligibility for selection is that the employees must be working in the grade the minimum of which is Rs.1400/- and higher Group 'C' grades provided they have rendered not less than three years of non-fortuitous service in the grade and have reached the pay stage of Rs.2050/- (Annexure A-2). The applicant submitted his application for the post from which it is clear that he fulfils the prescribed qualifications under the unamended recruitment rules (Annexure A-3). According to him, there was no other candidate fulfilling the requisite qualifications. He submitted representations to the respondents on 10.1.1989, 11.4.1989 and 17.4.1989 which did not yield any result.

4. The respondents, vide their letter dated 2.6.89 (Annexure A-1), decided to hold the written test for selection to the post of Assistant Engineer (Horticulture) on 30.6.1989 and invited two more candidates to appear along with the applicant. In the said letter, the respondents changed the eligibility criteria for selection inasmuch as they dispensed with the condition of pay-scale of Rs.2050 which had been prescribed under the unamended rules. According to the ^{applicant,} the other two candidates, i.e., Shri Madan Singh and Shri Hari Kishan Sharma, did not fulfil the eligibility criteria prescribed under the unamended rules. He has also contended that as there is only one post of Assistant Engineer (Horticulture), it cannot be reserved for a Scheduled Caste candidate.

5. The learned counsel for the respondents drew our attention to the additional affidavit filed by the respondents on 1.9.1989, wherein the service particulars of S/Shri Madan Singh and Hari Kishan Sharma have been given. He stated that the vacancy is not going to be reserved for Scheduled Caste/Scheduled Tribe candidates and that S/Shri Madan Singh and Hari Kishan Sharma fulfilled the eligibility criteria under the unamended rules. The amendment of the rules by letter dated 2.6.1989 (Annexure A-1), has no bearing on the instant case.

6. According to the additional affidavit filed by the respondents, Shri Madan Singh has been working in the grade of Rs.1400-2300 since 1.5.1978 and Shri Hari Kishan Sharma in the same grade since 22.1.1977. They are presently working in the scale of Rs.2000-3200.

Their pay as on 31.7.1988 in the grade of Rs.2000-3200 is Rs.2120 and Rs.2060 respectively.

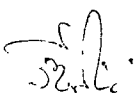
7. The question arises whether under the unamended rules, an employee would be eligible for selection if he is in the scale of pay of Rs.1400-2300 for more than three years of non-fortuitous service and presently draws pay of Rs.2050/- or more, which is ^{in a} ~~is~~ fortuitous service. According to the learned counsel for the applicant, such an employee will not be eligible for selection as the condition of non-fortuitous service would apply to not only the service of more than three years in the grade but also service in the grade or post in which he is drawing Rs.2050/-.

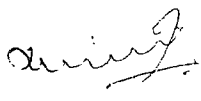
8. We are not impressed by the above contention raised by the learned counsel for the applicant. The plain meaning and intendment of the unamended rule is that the employee concerned should have worked in the grade the minimum of which is Rs.1400/-, that he should have rendered non-fortuitous service for more than three years in the said grade and that his present pay should be at the stage of Rs.2050/-. The present pay of the employee need not be in a non-fortuitous service. Even if an employee who is receiving pay of Rs.2050, has been appointed on an ad hoc or officiating basis, he would fulfil the eligibility criteria prescribed under the rules. The learned counsel for the applicant produced before us copy of a letter dated 21.4.1989 which indicates that Shri Madan Singh and Shri Hari Kishan Sharma have been appointed only on ad hoc basis, and that they have not yet been regularised in the

scale of Rs.2000-3200. As already pointed above, the fact that these persons have been appointed on an ad hoc basis, would not make them ineligible for promotion by selection under the unamended rules. In our opinion, S/Shri Madan Singh and Hari Kishan Sharma also fulfil the eligibility criteria for selection for promotion as Assistant Engineer (Horticulture) and their being called for selection cannot be faulted.

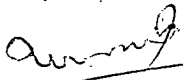
9. In the result, we hold that the applicant and S/Shri Madan Singh and Hari Kishan Sharma should be considered for promotion by selection in accordance with the unamended rules dated 28.8.1988 (Annexure A-2). The respondents are directed to consider their suitability in accordance with the said rules ^{or} ~~by holding a fresh~~ ^a ~~selection as indicated above within a period of three~~ ^a ~~months from the date of communication of this order.~~ ^a

The application is disposed of at the admission stage itself with the above directions. The parties will bear their own costs.


(S.P. Mukerji)
Vice-Chairman (Admn.)


(P.K. Kartha)
Vice-Chairman (Judl.)

*The portion in bracket has been deleted
in the order dated 25-9-90 in RA 171/89.*

 *Ve(J)*
25/9/90