

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No.OA 1536/89

Date of decision: 16.03.90.

Shri Karan Kumar & Others

.....Applicants

Vs.

Union of India through the
Principal Secretary to the
President of India, President's
Secretariat, Rashtrapati
Bhavan, New Delhi.

.....Respondents

For the Applicant

.....Shri K.L. Sharma,
Counsel

For the Respondents

.....Shri F.H.
Ramchandani, Sr.
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? *Yes*
2. To be referred to the Reporters or not? *No*

(The judgment of the Bench delivered by
Hon'ble Shri P.K. Kartha, Vice Chairman(J))

The applicants, who are working as LDCs/UDCs/
Assistants in the President's Secretariat, filed this
application under Section 19 of the Administrative
Tribunals Act, 1985 being aggrieved by the amendment
of the Recruitment Rules applicable to them which has
the affect of reducing the chances of their promotion
which were available under the unamended rules.

2. According to the President's Secretariat
(Recruitment and Conditions of Service) Rules, 1976

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(hereinafter referred to as the unamended rules), ^w the method of recruitment to the post of Assistant in the President's Secretariat was by promotion of Upper Division Clerks with at least three years service on the basis of seniority-cum-fitness as assessed by the Departmental Promotion Committee. The said rules were amended in 1988 (hereinafter referred to as the amended rules) whereby it was provided that method of recruitment to the post of Assistant will be 50% by promotion failing which by direct recruitment and 50% by direct recruitment. Upper Division Clerks with at least 5 years regular service on the basis of seniority-cum-fitness were eligible for promotion.

3. After the rules were amended, the President's Secretariat invited applications for three posts of Assistants by advertising in the daily News Papers. The applications were to reach the President's Secretariat by 20th July, 1989 at the latest. In the said advertisement, it was also stipulated that the applicants must possess a second class Bachelor's Degree from a recognised Indian University. The amended recruitment rules had only specified that the educational and other qualifications required for direct recruits is third class Bachelor's Degree from a recognised University. The advertisement also made another departure from the amended rules to the extent that it provided for a written and oral test for which there was no provision under the ^{an unamended} rules.

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4. The case of the applicants may be summed up as follows:-

(i) Even under the unamended rules, the chances of promotion were very meagre, the President's Secretariat being a very small organisation. The amendment of the rules made the position worse as regards promotion.

(ii) In the President's Secretariat, Assistants were required to have desirable knowledge of typing in English and Hindi but these qualifications have been relaxed in the case of direct recruits who may be raw and inexperienced persons. Under the advertisement issued by the President's Secretariat, the educational qualification prescribed for the post of Assistant is second class Bachelor's Degree from a recognised university while under the unamended rules, the prescribed educational qualification was matriculate or equivalent. The prescription of second class Bachelor's Degree is arbitrary.

5. The respondents have raised two preliminary objections as to the maintainability of the application, namely, (i) that it is barred by principles of res judicata and (ii) that the applicants have no prima facie case.

6. Eight out of fifty one applicants before us had filed writ petition No. 988/89 in the Supreme Court which was dismissed by the Supreme Court on 15.9.1989. The main grievance of the petitioners before the Supreme Court was against the amended ^{service} rules which had been alleged to be

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malafide and violative of their fundamental rights. In this context, applicants have pointed out that the order passed by the Supreme Court is not a speaking order and only speaking orders can be treated as binding orders. In our opinion, the above contention of the applicants is untenable.

7. The applicants have also contended that the issue involved in the writ petition filed in the Supreme Court is different from the one raised in the present application. It is true that in the case before the Supreme Court, apart from the validity of the amended rules, the applicants also had challenged the impugned orders of reversion. To that extent, the matters before the Supreme Court and this Tribunal cannot be said to be identical.

8. The respondents have stated in their counter-affidavit that the rules were amended with the object of improving the efficiency of the office, better staff management and bringing the system closer to that obtaining in the rest of the Government, while at the same time bearing in mind the career prospects of the LDCs and UDCs. Under the rules which were amended in 1988, direct recruitment was made in the President's Secretariat only at the level of LDCs and Stenographer; the other posts upto the level of Under Secretary and even Deputy Secretary (unless appointed on deputation) were filled through promotion only. For appointment of LDCs,

the qualification required had been only matriculation. There was no adequate arrangement for training of staff recruited except through apprenticeship on the job. This system was not conducive to the efficient working of the office. There was a lack of facilities without modern office management and new equipment. The procedures were outmoded. Filling up of post through in-house promotion, did not yield the best quality at higher levels. In fact, a large proportion of persons recruited as LDCs during the period 1976 to 1988 was from amongst the relatives and dependents of employees already working in the Secretariat. Hence, there was an imperative need to revamp the organisation of office and structure of staff and devise method to check any further erosion in the efficiency of the services. Action has to be taken to induct new equipment (e.g. computers), introduce new system of office management, arrange proper training programmes for the staff and revise the method of recruitment and review the recruitment rules to provide for higher qualifications and lateral induction of staff with higher education and wider horizons.

9. The respondents have pointed out that in the Central Secretariat, direct recruitment is made at various levels, namely, the Lower Division Clerks, Assistants and Section Officers besides recruitment through promotion. The rules were amended taking the above factors into consideration.

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10. We have carefully gone through the records and have heard the learned counsel of both parties. In the instant case, the recruitment rules have been amended with prospective operation. A Constitution Bench of the Supreme Court has held in *Bishan Sarup Gupta Vs. Union of India*, 1974 SCC(L&S) 506 at 518 that "this Court is not concerned with Government's policy in recruiting officers to any service. Government runs the service and it is presumed that it knows what is best in the public interest. Government knows the calibre of candidates available and it is for the Government to determine how a particular service is to be manned - whether by direct recruits or by promotees or by both and, if by both, what should be the ratio between the two sources having regard to the age factor, experience and other exigencies of service. Commissions and Committees appointed by the Government may indeed give useful advice but ultimately it is for the Government to decide for itself".

11. It is well settled that it is open to the appointing authority to lay down the requisite qualifications for recruitment to Government service. In *Banarsi Das Vs. State of U.P.*, AIR 1956 SC 520 at 522, a Constitution Bench of the Supreme Court has observed that "Article 16 of the Constitution is an instance of the application of the general rule of equality laid down in Article 14, with special reference to the opportunity for appointment and the employment under the Government. Like all other

employers, Government are ^{also} entitled to pick and choose from amongst a large number of candidates offering themselves for employment under the Government."

12. In State of Mysore Vs. S.R. Jayaram, 1968 SLR 92(SC) at 97, a Constitution Bench of the Supreme Court has observed that "that the principle of recruitment by open competition aims at ensuring equality of opportunity in the matter of employment and obtaining the services of the most meritorious candidates".


13. In State of Kerala Vs. N.M. Thomas, 1976 SCC (L&S) 227 at 250 and 265, a Constitution Bench of the Supreme Court has observed that the equality of opportunity need not be confused with absolute equality. Article 16 does not prohibit the prescription of reasonable qualification for selection to any employment or appointment to any office.


14. In the light of the forgoing, we are of the opinion that there is no ~~il~~ ^llegal or constitutional infirmity in the amended rules which have been impugned in the present proceedings. We also do not see any illegality in restructuring the field of choice to those who hold second class Bachelor's Degree, even though the recruitment rules prescribe only third class Bachelor's Degree as the educational qualification for direct recruitment. We have noticed that in response to the advertisement for three posts of Assistants, the respondents have received 3,000 applications ^{and} out of which 765 candidates had been screened and allowed

to appear at the written examination held by them. The prescription of second class Bachelor's Degree appears to have been made to restrict the number of applications which is quite reasonable.

15. It is true that the chances of promotion of the applicants have been adversely affected by the amendment of the rules in 1988 and reducing the chance of promotion from cent percent to 50 percent. In a long line of decisions, the Supreme Court has held that mere chances of promotion are not conditions of service and the fact that there was reduction in the chance of promotion did not tantamount to a change in the conditions of service (Vide State of Mysore Vs. G.B. Purohit, 1967 SLR 753 (Supreme Court); Ramchandra Shankar Deodhar Vs. State of Maharashtra, 1974 SCC(L&S) 137; State of Maharashtra Vs. C.A. Kulkarni, 1981 SCC(L&S) 562; and Bakhshish Singh Vs. Union of India, 1985 SCC(L&S) 834).

16. In the conspectus of the facts and circumstances of the case, we are of the opinion that the applicants have not made out a prima facie case for entertaining the present application. The application is dismissed at the admission stage itself, leaving the parties to bear their respective costs.


(D.K. CHAKRAVORTY)
MEMBER (A) 16/3/1990


16/3/90
(P.K. KARTHA)
VICE CHAIRMAN (J)