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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1624/89

NEW DELHI THIS THE 9th DAY OF FEBRUARY, 1995.

HON'BLE MR JUSTICE S.K. DHAON, VICE CHAIRMAN(J)
HON'BLE MR B.K. SINGH, MEMBER (A)

1. Shri VPS Chawla,
S/o Shri B.S. Chawla,
Assistant Naval Stores Officers.

2. Shri O.P. Asija
Dte of Naval Air Material
Naval Headquarters 'A' Block
Hutments, DHQ P.O.
New Delhi-110001.

3. Shri R.M. Nanda,
S/o Late Shri P.C. Nanda

4. Shri I. Balaraju
S/o Shri O.A. Swami

(All A.N.S.Os (1,3,&4 working in the Office of Directorate of Logistics Support, Naval HQrs, C Wing, Sena Bhavan, New Delhi-11). ....Applicants

(By Advocate : Shri Naresh Kaushik)

VERSUS

UNION OF INDIA, THROUGH

1. The Secretary,
Ministry of Defence,
South Block,
NEW DELHI.

2. Chief of the Naval Staff,
Naval Headquarters,
South Block,
NEW DELHI.

3. The Director,
Civilina Personnel,
Naval Headquarters,
Sena Bhavan,
NEW DELHI. ....Respondents

(By Advocate : Shri P.H. Ramchandani)

JUDGEMENT

Hon'ble Shri B.K. Singh, Member (A)

This O.A. No.1624/89 has been filed against the Order contained in the S.R.O.No.54

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that they would continue to be governed by S.R.O. 297 of 1979.

4. On notice the respondents filed the reply contesting the application and grant of reliefs prayed for. We heard the learned Counsel Shri Naresh Kaushik for the applicants and Shri P.H. Ramchandani assisted by Shri J.C. Madan for the respondents and perused the record of the case and the written submissions of the applicants.

5. The main grounds advanced by the applicant's counsel is that the extended period from 7 years to 8 years for promotion to the post of N.S.O. is violative of the principle of natural justice since the amendment was brought without giving the applicants any opportunity of being heard. The change in the eligibility criterian for promotion from 7 years to 8 years is not based on the well-defined classification and that it affects the promotion prospects of the applicants and that this is also violative of Article 14 and 16 of the Constitution, since it changes the qualifying period for promotion from 7 years to 8 years to the disadvantage of the applicants.

6. The learned counsel for the respondents admitted that the recruitment rules of N.S.Os framed in 1979 vide S.R.O. 297 of 1979 stipulated the qualifying period for promotion from A.N.S.O. to N.S.O. as 7 years. But in view of the

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DCPT O.M.No.14017/24/76-Estt. (RR) dated 22nd May,1979 the Recruitment Rules for the post of A.N.S.O. and N.S.O. were revised in 1989 in exercise of the powers conferred by proviso to Article 309 of the Constitution issued vide S.R.O. 54 dated 15.2.89 according to which minimum qualifying period of service for consideration for promotion to the grade of N.S.O. from A.N.S.O. has been enhanced to 8 years. This is as per the guidelines of the DOPT and duly approved by the U.P.S.C. There were sufficient number of A.N.S.Os with 8 years of service to fill up the vacancies of N.S.Os. The grouse of the applicants is that in doing so their chances of promotion were blocked. The respondents point out that minimum 8 years' service is required for promotion to all posts from the scale of Rs.2000-3500 in the Central Secretariat to Rs.3000-4500. And it was felt that there was no justification for reducing minimum qualifyin period from 8 years to 7 years in case of ANSO for promotion to the post of N.S.O. Even an Assistant in the Secretariat can become a Section Officer only after putting in 8 years of service, and a Section Officer is eligible for consideration for promotion to the rank of Under Secretary after putting in 8 years of minimum service. On this analogy the qualifying period for promotion from the grade of ANSO to that of N.S.O. was raised from 7 years to 8 years.

7. The power to frame rules or to amend the same is vested in the Government and is part of the delegated legislation under proviso

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to Article 309 and in the exercise of that power S.R.O. 54 of 15.2.1989 was issued and there is no need to consult applicants or to provide them an opportunity of being heard. The amendment was needed to bring the qualifying period in line with the qualifying period stipulated for other categories of staff as stated above. The pay scale of N.S.O. is Rs.3000-4500 and that of A.N.S.O. is Rs.2000-3500 and as such on the analogy of promotion from Rs.2000-3500 to any other category where the qualifying period was 8 years, the qualifying period for purposes of promotion in the case of ANSO to NSO was also increased to 8 years.

8. The modifications/revisions in RRs are made by the Government in the exigency of public service and it is not necessary to seek the views of the employees in this regard. It Was argued that the Respondents realised the hardship in view of the several judgements of the Hon'ble Supreme Court where rota-quota system did not work and where promotees had been working for a much longer period and the direct recruits who came much later than the promotees were placed above them in the seniority list, and to remedy this situation, the Administration brought about this amendment. These amendments were issued in the light of the guidelines of DOPT and in consultation with the U.P.S.C. and this period of 8 years is equally applicable to both the groups i.e. direct recruits and the promotees, and when

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there is uniform application of the rules, Article 14 and 16 of the Constitution are not attracted and there is no discrimination to any of the groups.

9. In the written submissions it has been stated that in the case of Shri B.M. Sharma Vs State of Haryana reported in 1987 (5) SLP 531 ; it has been laid down that though power to amend the rules is accepted but benefits accrued cannot be taken away or curtained and abridged. The same view has been reiterated in T.R. Kapur and Others Vs State of Haryana & Others A.I.R. 1987 S.C. 415; which lays down that

> "The Rules defining qualifications and suitability for promotion are conditions of service and they cannot be changed retrospectively. This rule is, however, subject to a well-recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective affect i.e. there is no power to make such a rule under proviso to Article 309 which affects or impairs vested rights."

In the case of R.K. Dilbagi Vs State of Haryana; 1991 (3) SLP (P&H) "the benefits acquired under the existing rules cannot be taken away by amendment with retrospective effect." It has been further stated in the written submissions that the amendment was made with the sole aim of promoting juniors to applicants

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Shri R.A. Murthi and a few others. After the promotion of these favourites the respondents reverted back to the old rules.

10. From a perusal of the counter-affidavit it is clear that the amendment was carried out as per the guidelines of the DOPT and in consultation with the U.P.S.C. According to the written submissions, the respondents are guilty of legal bias in favour of Shri Murthi and others for whom the qualifying period was enhanced from 7 years to 8 years so that they can be promoted earlier than the applicants.

11. After hearing the rival contentions and going through the records we find that the promoted officers are the necessary parties and they have not been impleaded as such by the applicants. The impleadment of necessary parties is a mandatory provision incorporated as per amendment of C.P.C. in 1976 with effect from 01.02.1977. The ratio of the ruling cited by the learned counsel for the applicants is not relevant in regard to issue under adjudication. None of the vested rights of the applicants have either been curtailed or abridged. The Hon'ble Supreme Court in case of K.K. Bevin Katti as Appellant Vs Karnataka Public Service Commission as Respondents; AIR 1990 S.C.1233 has held "If the Recruitment Rules are amended retrospectively during the pendency of selection in that event selection must be held in accordance with the amended rules. There is no violation

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of Article 14 & 16 if the rules are applied uniformally to all."

Although the origin of government service is contractual but the terms of service or conditions of service are liable to be unilaterally altered by the Government without the consent of the employees as has been held by the Hon'ble Supreme Court in case of J&K Vs T.N. Khosa (1974) 1 S.C.19. The Hon'ble upreme Court have held as follows :-

> "A rule which classfies such employees for promotional purposes unduly operates on those who entered service before the framing of the rule but it operates in future in the sense that it governs the future right of promotion of those who are already in the service. The impugned rules do not recall a promotion already made or reduce a pay scale already granted (these are instances of vested rights accrued which cannot be taken away by a retrospective rule) - - if rules governing the conditions of service cannot either operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retrospectivity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective. It is well settled that though employment under the Government like

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that under any other master may have a contractual origin, the government servant acquires a status after appointment to his office. As a result his rights and obligations are liable to be determined under statutory or constitutional validity , which for its exercis requires no reciprocal consent. The government can alter the terms and conditions of employees unilaterally and consent is not a pre-condition of the validity of the rules of service, the contractual origin of service notwithstanding."

12. The same view was held in the following cases :-

1. Roshan Lal Tandon Vs Union of India A.I.R. 1967 S.C. 1889.

2. L. Laxman Rao Vs State of Karnataka A.I.R. 1975 S.C. 1646

3. Dinesh Chandra Sangama Vs State of Assam (1977) 4 SCC 441

13. This law has been fully explained in Ranga Swami Vs State of A.P. reported in A.I.R. 1990 S.C. 535, wherein it was laid down that it is none of the business of the Courts to scrutinise rules prescribed for post, relevancy and suitability or eligibility qualifications is not for courts to consider and assess. The courts in these judgements have been restrained from interfering with the relevancy and suitability of the qualifications.

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14. Thus it would be seen that prescribing certain number of years of service in a particular category cannot be said to be per se arbitrary. Prescribing minimum period of 8 years instead of 7 years for promotion from the post of A.N.S.O. to N.S.O. both for the direct recruits and promotees as a condition of eligiblity for promotion cannot be termed as irrelevant, unreasonable and arbitrary and violative of Article 14 or 16. Seniority in a cadre does not ipso facto qualify a public servant for promotion to a higher post much less seniority so fixed by itself be deemed sufficient. Before any person can be considered for promotion he must be eligible for promotion having regard to the qualifying period prescribed for the post. Only those who possess qualification prescribed for the post would be eligible for consideration provided they fall within the zone of consideration. It is from amongst such qualified persons that the most suitable would be selected for appointment.

15. In view of the analysis given in the foregoing paragraphs, we do not find anything wrong in the amendment of the Recruitment Rules and this falls within the domain of the executive. The allegations of malafide against the respondents has not been proved by any concrete instances or pleadings on record. Malafide is a very heavy burden to discharge.

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casual allegations without adequate proof cannot be accepted to substantiate charge of malafides.

16. In view of the foregoing analysis this O.A. fails and is dismissed, leaving the parties to bear own costs.

(B.K. SINGH)
MEMBER (A)

(S.K. DHAON)
VICE CHAIRMAN(J)

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