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Central Administrative Tribunal
Principal Bench

O.A. 2113/89

New Delhi this the 22nd day of July, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hon'ble Shri K. Muthukumar, Member(A).

1. Dr. G. Chaudhuri,
S/o late Shri S.K. Chaudhuri,
R/o 51, New Campus,
Jawaharlal Nehru University,
New Delhi.
2. Mrs. Kamini Misra Chaudhuri,
W/o Dr. G. Chaudhuri,
R/o 51, New Campus,
Jawaharlal Nehru University,
New Delhi.

...Applicants.

By Advocate Shri D.C. Vohra.

Versus

1. The Union of India through
The Cabinet Secretary,
Govt. of India,
Rashtrapati Bhawan,
New Delhi.
2. The Secretary,
Research & Analysis Wing,
Cabinet Secretariat,
Room No. 8-B, South Block,
New Delhi.

...Respondents.

By Advocate Shri M.K. Gupta.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants have filed this application under Section 19 of the Administrative Tribunals Act, 1985 being aggrieved by the non-action of the respondents in finalising the seniority list of Deputy Foreign Language Examiners (DFLE) and holding the DPC to the post of Foreign Language Examiner (FLE).

2. The applicants submit that they are direct recruit DFLEs who were appointed on 27.12.1985 and 3.2.1986 respectively. The DFLE is a Class-I Gazetted post in the grade of Rs.700-1300 now revised

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to Rs.2200-4000. The Tribunal in its judgement in Sham Sunder & Ors. Vs. Union of India & Ors. (T-493/86- CW 2199/81) which had been transferred from the Delhi High Court, decided on 29.8.1988, held that the applicants in that case will be deemed to have been promoted from the scale of Rs.550-900 to the scale of Rs.700-1300 on the day on which they were actually promoted to Class-II posts as a result of their selection by a duly constituted DPC. The applicants state that they had tried to get clarification of this judgement from the respondents but they were not permitted and even their representation made in April, 1988 was not replied to. Their grievance is that the respondents not only promoted the five applicants, who were before the Tribunal to Class-I, but ~~the~~ 13 other Interpreters, who were not from the Intelligence Bureau, nor, according to them, who had exercised the options to be governed by the old Rules (i.e. the I.B. Rules) were also considered and promoted to the higher post of FLE. The applicants submit that if the 13 other persons, who were also promoted to Class-I from Class-III are to figure in the same list of DFLEs, this would jeopardise their interests. According to them, such a benefit given to the 13 persons is illegal. They are also aggrieved that in the seniority list prepared by the respondents dated 1.6.1988, they have included 13 other officers/interpreters, who, according to them, had not exercised the options under Rule 157 of the R&AW (RC&S) Rules, 1975. Their grievance is that ^{the} inclusion of these 13 other persons in the seniority list of ~~the~~ DFLEs along with them, who are direct recruits, is in violation of their fundamental rights guaranteed under Articles 14 and 16 of the Constitution. They have, therefore, sought a direction to the respondents to hold a DPC for promotion to the post of FLEs only after meeting the mandatory requirement prescribed by DP&Ar O.M. dated 30.12.1976 and that the second batch of the 13 interpreters should not be included in the seniority list of DFLEs without verifying the exercise of their options under Rule 157 of the R&AW (RC&S) Rules, 1975.

V.P

3. In Sham Sunder Vs. Union of India(supra), the Tribunal has held that in the facts of the case, the applicants, five in number, opted to continue to be governed by the rules under which they were originally recruited, i.e. under the I.B. Rules till 1968 and later they joined the Research and Analysis Wing (R&AW) when the latter organisation came into existence in 1968. In this application, the applicants had prayed for issuance of a direction to declare them eligible for consideration for promotion to the post of DFL (Class-I) in accordance with the Rules governing them as a result of the options exercised by them under Rule 157 of the Research and Analysis Wing (Recruitment Cadre & Service), Rules, 1975. Secondly, they had asked for quashing the direction that they should undergo written test for consideration for promotion to the grade of AFLE (Class-II). The form of the option exercised by the applicants has been reproduced in paragraph 10 of the judgement and reads as under:

"FORM OF OPTION

See Rule 157 of the R&AW (Recruitment Cadre & Service) Rules, 1975.

*(i) I, _____ hereby opt to be governed under the Research & Analysis Wing (Recruitment Cadre and Service) Rules, 1975 w.e.f. 21.10.1975.

(ii) I, H.L. Kwattra, FO(L) hereby opt to continue to be governed
(Name & designation)
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to be governed under the rules under which I was originally recruited. I understand that this option shall be valid only upto the stage of my promotion to the next higher grade whereafter I shall be governed by the R&AW (Recruitment Cadre & Service) Rules, 1975.

Signature

Name: H.L. Kwattra
(in capitals)

Place of
Posting: New Delhi

Designation: Field Officer(L)

Dated: 6.3.1976"

The Tribunal held that a plain reading of the above option would show that the applicants were to be governed by the old I.B. Rules till they earned one promotion. Under the old I.B. Rules, there was no post of AFLE grade Rs.650-1200. After discussing the facts and law

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position, including the interpretation of the option, the Tribunal came to the conclusion that the application should be partly allowed and the applicants will be deemed to have been promoted from the scale of Rs.550-900 to the scale of Rs.700-1300 on the dates on which they were actually promoted as a result of their selection by a duly constituted DPC.

4. By a subsequent order dated 15.5.1990, the Tribunal has held that as a consequence of the judgement delivered on 29.8.1988 in Sham Sunder Vs. Union of India (supra), the seniority list of Language Officers in the grade of Rs.700-1300 would have undergone a change. It was held that it is, therefore, only fair and just that a fresh list of the Language Officers in the grade of Rs.700-1300, duly interpolating the names of persons, who have come within the purview of the judgement pronounced by the Tribunal dated 29.8.1988 is circulated among the concerned officers and after considering the objections raised, the seniority list be finalised.

9. The respondents had circulated a draft seniority list on 9.10.1989 and final seniority list was circulated on 29.3.1990 after examining the representations received. The main contention of the applicants in the representations made to the seniority list dated 29.3.1990 is that the 13 interpreters who/ are not R&AW recruits. They contend that they have not come to the R&AW from Intelligence Bureau but transferred to join R&AW as fresh recruits. They have submitted that their position is, therefore, different from the 5 applicants who had approached the Tribunal in Sham Sunder's case (supra). They also contend that these 13 interpreters who had been interpolated in the seniority list afresh had not executed any written options that they be governed by the I.B. rules till their first promotion as was the case of the five interpreters who had approached the Tribunal. According to them, they had filled all the 18 posts of DFLEs (5+13) in violation of the Rules as only 5 persons could have been promoted as per the quota of promotion under the I.B. Rules. In pursuance

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of the order of the Tribunal dated 8.3.1995, the respondents have filed an additional affidavit on 17.4.1995. They had been asked to file the additional affidavit stating therein the nature of the record relied upon by them on the basis of which they have stated that they have evidence to show that the interpreters had opted for the old rules and also verify from the record as to whether the two persons, namely S/Shri S.P. B-asu and I.S. Sharma had also opted for the old rules as stated in the affidavit filed by the respondents dated 2.3.1995. The respondents were also directed to produce the records of the four persons, namely, S/Shri N.P. Thapa (Sl.7), V.M. Sharma (Sl.8), Kewal Bhatnagar (Sl.12) and S.C. Kumar (Sl.13). The respondents have submitted in the additional affidavit that the original options of the 13 interpreters are not available with them but there is other evidence in the records to show that they had given their options to be governed by the old I.B. rules. The respondents have contended that all the 13 interpreters did not originally belong to the I.B. Some of them are from I.B., some from other departments and some are direct recruits of R&AW and they have given their details in the affidavit filed on 2.3.1995. Their contention is that these interpreters had given their options under the old IB rules. The 1975 R&AW rules came into force w.e.f. 21.10.1975, but the language cadre as such was transferred from I.B. to R&AW only w.e.f. 1.5.1976. The respondents have further submitted that although the original options in the case of the 13 interpreters were not available, but there are other sufficient evidence to show that all of them were to be governed by the old I.B. rules. They have submitted that the hand written list prepared by Shri I.S. Saxena who dealt with the interpreters in 1981 had been filed in the court. They have also referred to the note prepared by the U.S. (Pers.IV) dated 18.1.1989 in this regard in which it has been stated that in the absence of the original evidence available on record, they may proceed on collateral evidence. They have referred to the records

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from which they have concluded that all the 18 interpreters had opted for the old rules. They have, therefore, submitted that it was based on these records that further action had been taken by them. They have submitted file Nos. 18/5/76 E5 and 25/1/88-Pers 10-II for our perusal and given the details as to how the interpreters had exercised their options. These contentions have been refuted by the applicants in their counter affidavit and by Dr. D.C. Vohra, learned counsel. He reiterates that the 13 interpreters are not similarly placed as the 5 applicants in Sham Sunder's case (supra) and secondly that while the original options in Sham Sunder's case (supra) were produced in the court, that has not been done in the present case. He has, therefore submitted that in the absence of the original options exercised by the 13 interpreters which is the only important relevant fact to be considered, they cannot be given the benefit of the judgement in Sham Sunder's case (supra).

10. On perusal of the records/files submitted by the respondents, we are satisfied that the respondents through the concerned section had issued a circular calling for options from all the executive staff of R&AW asking every member of R&AW to append the signatures in token of having received in the same in the register. We are also satisfied that the submissions made by the respondents regarding the exercise of the options by the 13 interpreters are based on the available records which have been maintained by the respondents - the concerned department and are contemporaneous records of the case maintained by them. We have, therefore, no reason to doubt the authenticity of these records which have been produced as collateral evidence of the fact that these 13 persons had exercised the necessary options at that time. We find no force in the submissions of the learned counsel for the applicant that these records cannot be relied upon, only the original options exercised by the 13 interpreters are relevant and in their absence they should not be given any benefit flowing from the judgement in Sham Sunder's case (supra). On the other hand, the learned counsel for the respondents has relied on the judgement of the Supreme Court in C.P. Aggarwal, etc. Vs. P.O. Labour Court (JT1996(9) SC 729) which is relevant. The records produced by the respondents

relate to the promotion of interpreters and the options exercised by them on the coming into force/the R&AW Rules in 1975. We, therefore, have no hesitation in accepting the contentions of the respondents that they/acted bonafide in preparation of the seniority list, taking into account the collateral evidence available with them.

11. Therefore, in the facts and circumstances of the case, the contention of the applicants that the 13 interpreters who had been given promotion to the rank of DFLEs in pursuance of the judgement of the Tribunal in Sham Sunder's case (supra) dated 29.8.1988 are not similarly situated as they had not exercised their options, is without any basis. In other words, the action of the respondents in giving them the promotion and including them in the seniority list of DFLEs cannot be faulted.

12. M.As. 1912/93 and 1835/92 have also been listed for disposal together with the O.A. In M.A. 1835/92, the applicants have stated that meanwhile the respondents have already held DPC and promoted several officials, including both the applicants, to the posts of Under Secretary, but they have violated their own recruitment rules as well as the old I.B. rules by which the 13 persons had been promoted from Class III to Class-I post of DFLE against the rules. M.A. 1912/93 had been filed by the applicants for implementation of the order of the Tribunal dated 15.5.1990. For the reasons given above, there is no merit also in MAs 1912/93 and 1835/92 and they are rejected.

13. In the result, as there is no merit in this application, the same is dismissed. No order as to costs.


(K. Muthukumar)
Member(J)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'