

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

REGN NO. OA 1993/88

DATE OF DECISION: 11.5.89

Shri Joginder Singh & Ors. Applicants.

VERSUS

Union of India & Ors. Respondents.

Sarvashri J.S. Bali, S.S. Tewari Counsel for the
and Atul Wadera. Applicants.

Shri P.H. Ramachandani. Counsel for the
Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. P. Srinivasan, Member.

(Judgment of the Bench delivered by the
Hon'ble Member, Mr. P. Srinivsan.)

JUDGMENT

This Application has come up before us today for admission. It had earlier come up before another Bench of this Tribunal, when a question was raised as to whether the subject matter of this Application could be entertained or by this Tribunal/whether the proper forum would be the one provided in the Industrial Disputes Act (IDA).

Shri J.S. Bali, learned counsel for the Applicants submitted that in respect of a matter falling within the scope of the IDA, an aggrieved employee has the option to approach this Tribunal also and, therefore, the Application could be entertained by us. Since learned counsel for the respondents did not press his objection to this contention, we need not go into this question here as we feel that this Application can be disposed of on a short point^{to H} which we will refer presently.

The Applicants who are working as Lift Mechanics in the Central Public Workds Department(CPWD) at Delhi pray in this Application for-

"A writ of mandamus to the respondents to create promotional avenues from 31.5.1969, date of submission

P. Srinivasan

of Bhattacharya report and to upgrade lift mechanics to highly skilled category."

Shri J.S. Bali, learned counsel for the Applicants submitted that the Bhattacharya Committee which was appointed in 1968 to investigate the causes of frequent failures of lifts installed in various buildings had submitted its report in 1969 recommending the creation of posts of Senior Mechanic (Lift) and E&M Superintendent(Lift). Generally a person entering Government service could expect one or two promotions in his career, but so far as the applicants were concerned, there were no promotional avenues at all as the Government took no action on the recommendations of the Bhattacharya Committee. Relying on the ruling of the Supreme Court in Raghunath Prasad Singh Vs. Home (Police) Deptt and others, 1988(Supp) SCC 519, Shri Bali submitted that this Tribunal was competent to direct the respondents to provide ^{for} the Applicants at least two promotional avenues, particularly as the Bhattacharya Committee had made a recommendation to this effect.

Shri P.H. Ramachandani, learned counsel for the Respondents strongly resisted the contention of Shri Bali. He submitted that the jurisdiction and powers of the Supreme Court under Article 136 were much wider than those of the High Court or this Tribunal. The Supreme Court can take into account the equities of the situation and issue directions in the interests of justice. But this Tribunal can only adjudicate where the right of an employee has been denied. No employee ^{can} as a matter of right or law, claim that he should have one or more promotional avenues. That being so, this Tribunal cannot adjudicate a claim which is not available to an employee under law.

P. H. Ramachandani

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We agree with Shri Ramachandani that the structuring of posts in a Government department including the provision of avenues of promotion to different classes of employees is entirely a matter within the competence of the administrative authorities and not something with which we should interfere unless some legal infirmity is made out. Depending upon the requirements of administration, Government may establish one or more cadres and provide that persons recruited to one Cadre will be eligible for promotion to higher cadres. If Government is of the view that the cadre of Lift Mechanic cannot be provided with any promotional avenues, it is entirely upto the Government and this Tribunal ^{cannot} impose its own views on the subject. Our view in this regard is supported by the judgements of the Supreme Court in State of U.P. and Others Vs. J.P. Chaurasia and Others AIR 1989 SC 19 and Umesh Chandra Gupta and Others Vs. Oil and Natural Gas Commission, AIR 1989 SC 29.

We have carefully read the judgement of the Court in Raghunath Prasad Singh's case relied upon by Shri Bali. In that case the point at issue was whether the petitioners who were working in the Wireless Wing having been recruited to that Wing after May, 1970 should be allowed to exercise an option to continue to work in that wing or to switch over to the general police cadre. Such option was available for persons who had been recruited to the Wireless Wing of the police organisation prior to May 1970 and the petitioner before the Supreme Court was recruited to that organisation after that date. The High Court held that they were not entitled to that option. The Supreme Court confirmed this ruling and observed that the appeal was liable to be dismissed. While doing so, their Lordships observed-

P. S. V.

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"We would like to take notice of another aspect.

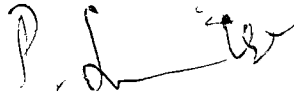
In course of hearing of the appeal, to a query made by us, learned counsel for the appellant indicated the reason as to why the appellant was anxious to switch over to the general cadre. He relied upon two or three communications which are a part of the record where it has been indicated that there is no promotional opportunity available in the wireless organisation. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organisation within six months from today by appropriate amendments of Rules. In case the State of Bihar fails to comply with this direction, it should, within two months thereafter, give a fresh opportunity to personnel in the police wireless organisation to exercise option to revert to the general cadre and that benefit should be extended to everyone in the wireless organisation."

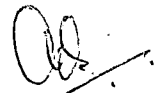
It will be immediately seen from the above observations that the Court upheld the legal position which excluded the petitioners therein from exercising option, but on equitable considerations directed the Government of Bihar either to give the petitioners an avenue of promotion or in the alternative give them a fresh opportunity to change over to the general cadre. We feel that we are not competent to go beyond the legal position viz. that structuring posts in Government is the exclusive domain of the Executive and we cannot interfere with the exercise of discretion by the authorities in this regard unless it is shown to be tainted by any illegality which is not the case here.

R. S. G.

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In view of this we find ourselves unable to accede to the prayer contained in the Application. The Application, therefore, deserves to be rejected at the admission stage itself.

Having said so much, we would commend to the Administration to examine the matter on their own from the point of view of the morale of persons working as Lift Mechanics in the light of the functional justification for creation of higher posts given by the Bhattacharya Committee and bearing in mind the observations of the Supreme Court in Raghunath Prasad Singh's case. It is upto them to devise such measures as they may deem fit to remove the grievance of persons like the applicants. The Application is rejected at the stage of admission with these observations. Parties to bear their own costs.


(P. SRINIVASAN)
MEMBER (A)


(AMITAV BANERJI)
CHAIRMAN