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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.773/88

Dated: 29.10.93

Mrs. Kusum Chib

Applicant

Vs.

Union of India & Ors.

Respondents

Present: Shri G.D. Gupta, Counsel for Applicant
Shri M.L. Verma, Counsel for Respondents..

CORAM

1. Hon'ble Mr. J.P. Sharma, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT


(Delivered by Hon'ble Mr. B.K. Singh, Member (A))

This O.A. No.773/88 has been filed under Section 19 of the CAT Act, 1985 with Mrs. Kusum Chib as applicant and Union of India & others as respondents for quashing the Memorandum dated 20th November 1986 and Office Memo. dated 9th March 1988 denying the benefits of regularisation to the applicant on the ground that the posts of Senior Documentation Assistant were to be filled 100% by direct recruitment and the applicant's ^{case} could not be considered till the recruitment rules were amended to earmark some posts to be filled up by promotion. The applicant is working as Senior Documentation Assistant in the pay-scale of Rs,550-900 on ad-hoc basis in the National Medical Library which is under the Directorate General of Health Services. The applicant is M.A. in Philosophy and has Diplomas in Library Science and Russian Language. She

was initially appointed as Librarian Grade-II in the

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pay-scale of Rs.210-425/- which was subsequently revised to Rs.425-700/- in the National Medical Library. She was appointed on the 29th October, 1969 as a direct recruit after being sponsored by the Employment Exchange and selected through open competition. The next higher grade is that of Librarian Grade-I in the scale of Rs.650-1200. The Recruitment Rules were made under Proviso to Article 309 of the Constitution in 1966 which came into force w.e.f. 3.3.1967. This is placed at annexure 'A' of the paper-book. The said recruitment rules were replaced by RRs of 1986 promulgated on 11.7.86. This is annexure 'B' of the paper-book. Separate posts of Junior/Senior Documentation Assistants existed in the National Medical Library. The applicant was appointed as Sr. Documentation Assistant vide Office Order dated 5.3.1980 (annexure 'C' of the paper-book). The applicant was appointed on ad-hoc basis until further orders. The appointment letter stipulated that the said appointment will not confer any right for regular appointment or will not count for seniority in the post and that the applicant could be reverted to the post of Librarian Grade-II at any time without assigning any reason or without giving any notice.



2. Recruitment rules for the said post of Senior Documentation Assistant were framed under proviso to Art.309 of the Constitution and promulgated on 11th July 1986 and came into effect from the date of publication (annexure 'B'). These recruitment rules envisaged the requirement of filling up the post of Sr. Documentation Assistant 100% by the method of direct recruitment. The applicant filed representation for her regularisation but in view of the RRs she received a negative reply. She however, got an assurance that the department would take up the question of amendment of RRs to provide 50% appointment by direct recruitment and 50% by promotion as was envisaged in the draft RRs and till the amendment was made, the applicant could not ^{be} regularised against the post of Sr. Documentation Assistant.

3. The applicant in her OA has sought the following reliefs:-

- i) quashing the Memo. dated 20th November 1986 and also the Memo. dated 9th March 1988;
- ii) striking down the RRs as violative of Art.14 and 16 of the Constitution;
- iii) declaring the applicant automatically appointed as Senior Documentation Assistant from the date she was appointed as Librarian Grade-II with consequential benefits;
- iv) to direct the respondents to make provision of promotion in the RRs for Sr. Documentation Assistants;



- v) quashing the promotion of Respondent No.3
Shri Hira Lal as Librarian, Grade-I;
- vi) declaring the applicant having been promoted
to Librarian Grade-I from the date the
respondent No.3 was promoted;
- vii) quashing the advertisement for the post
of of Senior Documentation Assistant dated
12.12.1987;
- viii) Restraining the respondents from reverting
the applicant from the post of Sr. Document-
ation Assistant and instead allowing her
to continue on the said post after regulari-
sing the post from the date of her ad-hoc
appointment.

4. Heard the learned counsels S/Shri G.D. Gupta for the applicant and Shri M.L. Verma for the respondents and perused the record of the case and various pleadings and annexures annexed with the O.A. and the counter. The learned counsel for the respondents argued first and contended that the applicant was appointed purely on an ad-hoc basis and the letter of her appointment categorically states that her appointment as Senior Documentation Assistant will not confer any right to regularise her services and will also not count for seniority since this was a stop gap arrangement in the exigencies of public services till the recruitment rules were finalised and promulgated. The letter also stipulates that she could be reverted to her post of Librarian Grade-II without any notice or any reason being assigned therefor.



5. The application, thus, according to the learned counsel for the respondents is devoid of merit and liable to be dismissed in terms of appointment letter itself. He further argued that the application is barred under Section 20 and 21 of CAT Act (Procedure) Rules 1987. It was further contended that while the RRs were under finalisation the posts of Senior Documentation Assistant were filled up in 1980 keeping in view the functional requirements. The draft RRs provided for 50% promotion and 50% direct recruitment. The RRs finally approved by the UPSC and Department of Personnel & A.R. provided 100% direct recruitment as mode of recruitment. These RRs came into effect from the date of their notification in the Gazette of India. The contents of the appointment letter which stipulate that this was purely ad-hoc arrangement and could be terminated anytime without assigning any reason or giving any notice itself shows that they had no case.

6. It was argued by the learned counsel for the applicant that rules made in exercise of the power under proviso to Article 309 of the Constitution cannot have retrospective effect. It was said

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that these were subordinate pieces of legislation and unless there was stipulation to that effect these could not be applied retrospectively. It has been held by Hon'ble Supreme Court in B.S. Badera Vs. Union of India AIR 1969 SC 118 that government have the powers to make rules under this provision with retrospective effect. This, however, does not imply that all rules framed to regulate service conditions can have retrospective effect. It was further argued by the learned counsel for the applicant that rule which merely operates on an existing situation or affects existing employees as well cannot on that ground alone be treated as retrospective unless it is shown that rules so framed have been the intention of rule-making authorities to apply it retrospectively. The learned counsel argued that the recruitment rules framed and promulgated providing for 100% direct recruitment as the mode of recruitment affects the applicant and other persons similarly situated adversely. Secondly, he argued, that the applicant has worked against the post of Sr. Documentation Assistant right from 1980 and she ought to have been regularised because of her

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qualifications and long stay in the National Medical Library as Sr. Documentation Assistant. The promotion according to him were made because there were specific recommendations in the draft Recruitment Rules that 50% of the posts will be available against promotion quota and 50% would be filled up by direct recruitment. This is the reason why out of 10 posts in the category of Sr. Documentation Assistants, 5 eligible candidates were duly promoted though on an ad-hoc basis. If the provision of 50% against promotion quota ^{had been} made in the RRs finally approved by the UPSC and the Ministry of Personnel & A.R., the applicant could have been regularised in normal course and there would have been no necessity to approach this Tribunal for redressal of her grievances. It was further argued that the applicant had a right to be placed above Shri Hira Lal, respondent No.3. This contention of the learned counsel for the applicant was vigorously refuted by the respondents' counsel who said that Shri Hira Lal who was an SC was promoted in his own quota and was also senior to the applicant.



It was further argued by the learned counsel for the respondents that a saving clause was inserted in the notified RRs for the post of Sr. Documentation Assistants to protect the service in case of the persons holding the post of Librarian Grade-II in the higher pay-scale of Rs.550-900 i.e. Shri CPS Shamber. His service interests were protected by the said clause since he was holding that post in the pay-scale of Rs.550-900 as a UPSC nominee in the Central Health Transport Organisation where the post of Librarian Grade-II in the pay-scale of Rs.550-900 was created in lieu of one post of Librarian Grade-II in the pay-scale of Rs.425-700. As a matter of fact one post of Librarian Grade-II was surrendered as a higher post carrying the pay-scale of Rs.550-900 was created and Shri Shamber was transferred to the newly created post w.e.f. 5.12.1977. Since the post of Librarian Grade-II held by Shri Shamber, ^{and} the post of Sr. Documentation Assistant ~~carried~~ the same pay-scale of Rs.550-900, it was decided that these posts may be clubbed and no separate RRs framed. Since Shri Shamber was holding the post of Librarian Grade-II on regular basis w.e.f. 5.12.1977 in ^{and his service interests were protected} the National Medical Library by the saving clause in the RRs the applicant cannot have a grievance



against him. He was appointed earlier than the applicant in a higher pay-scale of Rs.550-900 while the applicant was still in a pay-scale of Rs.425-700. Shri Shamber was appointed on regular basis whereas the applicant was appointed on an ad hoc basis in 1980. Thus the reliefs sought regarding her promotion w.e.f. 5.12.77 is misplaced. Thus the post held by Shri Shamber has a different identity and is well protected by the saving clause itself. Shri Shamber was appointed not as a candidate sponsored by the Employment Exchange but a candidate who was selected by UPSC and appointed in the Central Health Transport Organisation in the pay-scale of Rs.550-900. This was Group 'B' post and that is why UPSC was approached for its recruitment. The applicant and other similarly situated persons were holders of 'C' posts and their names were sponsored by Employment Exchange and they were selected by the Health Directorate itself and thus they have no right to claim equivalence with Shri Shamber.

7. As regards the case of Shri Hira Lal who is respondent No.3, as stated above, he belongs



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to Scheduled Caste and has been given promotion to the post of Librarian Grade-I and Sr. Documentation Assistant on the basis of seniority and also in accordance with the instructions of Central Government in the matter of reservation of posts for SC or ST. Record does not indicate any representation having been filed by the applicant against the appointment of **Respondent** No.3 either as Librarian Grade-I or Sr. Documentation Assistant, although there is an averment that she had filed a representation which was rejected. This was also argued by the learned counsel for the applicant that her representations against the appointment of respondent No.3 was rejected by the Government. Neither the representation is there nor the rejection letter is available on file.

8. A perusal of the record indicates that the applicant joined the Department several years after the respondent No.3. She always was junior to respondent No.3 in all the grades. Only Mrs. A.K. Chauhan made representation against respondent No.3 as Librarian Grade-I. She has simply made an averment in para 19 of this O.A. that Smt. A.K. Chauhan who was senior to respondent No.3 in the seniority list of Librarian Grade-II was also not promoted and that Mrs. Chauhan represented



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against her supersession. Her representations have been marked as annexure 'K' in the paper-book. The applicant instead of pleading her case ~~was~~ indirectly pleading the cause of Mrs. Chauhan in her application. The respondent No.3 was and is senior to the applicant, Smt. Kusum Chib in all respects. The respondent No.3, Shri Hira Lal was promoted as Librarian Grade-I on ad hoc basis in August 1983 against a SC vacancy and as such the applicant cannot have a grievance against the seniority of Shri Hira Lal who was senior to the applicant in the seniority list of Librarian Grade-II. The learned counsel for the respondent also cited two rulings of the hon'ble Supreme Court to prove the point that ad hoc appointment made in exigencies of service till regular selection was made could not count for promotion or seniority; 1987 (11 SCJ 61). It lays down that ad hoc appointment does not create any vested right and in such cases reversion can take place even without assigning any reason or giving any notice. He further supported this contention by 1987 (4) ATC 737 where it has been said that ad hoc appointment is only a stop-gap arrangement and that it does not confer any right and that reversion can be resorted to without any enquiry.



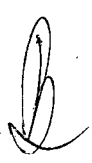
9. The hon'ble Supreme Court in Khosa case (State of J&K Vs. J.N. Khosa) 1074 1 SCC 19 has held,

"A rule which classifies such employees for promotional purposes, undoubtedly operates on those who entered service before the framing of the rule but it operates in future in the sense that it governs future right of promotion of those who are already in service. The rules do not recall a promotion already made or reduce a pay-scale already granted. They provide for a qualitative standard a measure of that standard being educational attainment.

Where a classification founded on such a consideration suffers from discriminatory voice and is violative of Art. 14 and 16 of the Constitution is another matter. But

surely rule cannot first be assumed to be retrospective and then be struck down reason that it violates the guarantee of equal opportunity by extending its arms over the past. If rules governing conditions of service cannot ever operate the prejudice of those who are in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the act of retro-activity. But such is not the implication of the service rules nor is it their true description to say that because they affect the existing employees, they are retrospective. It is well settled that though employment under government like that under any other master may have a contractual origin, a government servant acquires status on

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appointment to his office. As a result his rights and obligations are liable to be determined under statutory or constitutional authority which for its exercise requires no reciprocal consent. The government can alter terms and conditions of its employee unilaterally and although in modern times consensus in matters relating to public services is often attempted to be achieved, consent is not a pre-condition of the validity of rules of service having contractual origin of the service notwithstanding."

10. These observations of the hon'ble Supreme Court make it abundantly clear that unless rules are unreasonable or arbitrary these cannot be assailed and that the government have the authority to change the terms and conditions of service unilaterally. The Courts can interfere only when it is shown that a particular rule is ultra vires or is arbitrary. If a particular provision of a rule operates harshly, the employees should approach the competent authorities and not the Courts. The authorities in government are not callous or insensitive. The Division Bench comprising Hon'ble S. Ranganath Mishra and Hon'ble M.M. Punachi

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in Rangaswamy Vs. Government of A.P. AIR 1990 SC 535 have held that it is none of the business of the Courts to examine the validity of the rules or to scrutinise the qualifications prescribed for the post. Relevancy and suitability are not for the Courts to consider or assess since these fall within the domain of the Executive. It was laid down that in case of any grievance in that respect appropriate authorities must be moved for a review of qualifications laid down in the RRs or to consider the the element of harshness involved in the provision of the rule. If the provisions are violative ^{under} Art.14 and 16 of the Constitution on the ground that it is discriminatory, the classification attempted will be declared as unreasonable and arbitrary, but not otherwise. We do not find that there is any discrimination or violation of the Articles 14 and 16 of the Constitution as alleged by the learned counsel for the applicant. There is no discrimination

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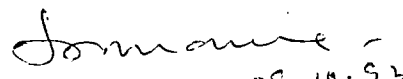
by the authorities in respect of applicant vis-a-vis Shri Hira Lal or Shri Shamber. On the facts of the case, both are senior to the applicant and both have come in their own right.

Taking a synoptic view of all the facts and circumstances of the case, we do not find any merit in the application and accordingly it is dismissed.

There will be no order as to costs.



(B.K. Singh)
Member (A)


25.10.93

(J.P. Sharma)
Member (J)

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