

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1232 1988
T.A. No.

DATE OF DECISION 8.8.1988

Shri Madan Lal

Petitioner

Shri B.S.Charya.

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondent(s)

None

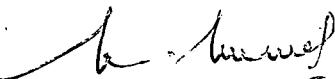
Advocate for the Respondent(s)

CORAM :

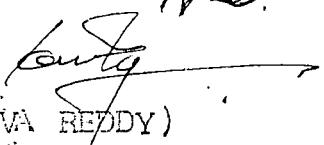
The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to all the Benches ? No


(KAUSHAL KUMAR)

MEMBER


(K. MADHAVA REDDY)

CHAIRMAN

8.8.88

13

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. CA 1232/88

Date of decision: 8.8.1988

Shri Madan Lal Applicant

Vs.

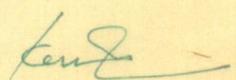
Union of India & others..... Respondents

CORAM: Hon'ble Mr.Justice K. Madhava Reddy,Chairman
Hon'ble Mr. Kaushal Kumar, Member

For the Applicant. Shri B.S.Charya,Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr.Justice K. Madhava Reddy,
Chairman)

This is an application under Section 19
of the Administrative Tribunals Act, 1985 to quash
the Central Indian Pharmacopoeia Laboratory,
Ghaziabad (Technical Assistant) Recruitment Rules,
1987 and the schedule attached thereto in so far
as the method of appointment by direct recruit-
ment under column 11 of the schedule is concerned
and also to declare the knowledge of typewriting
prescribed under col. 8 of the schedule as an
essential qualification for appointment to be superfluous
that requirement
and to direct to be dispensed with in making appoint-
ment to the post of Technical Assistant. The
applicant also seeks a further direction that
the appointment to the said post be made by way
of promotion failing which by direct recruitment
with the conditions of eligibility etc. as were
laid down in the amended Rules of 1972 notified
in 1973. He also seeks a direction to the Res.



pondents to fill up the vacant post now advertised, by way of promotion and only if they fail to find a suitable candidate for promotion, the mode of direct recruitment should be resorted to and to declare the amendment as arbitrary, unjust, improper and unreasonable and to restrain the Respondents from filling up the post of Technical Assistant by way of direct recruitment.

2. The Rules for recruitment to the post of Technical Assistant, referred to above, were amended under Notification dated 24.11.1987. There is no dispute that the present advertisement inviting applications for appointment to the post by way of direct recruitment is in accordance with the said Rules. What is contended is that the qualifications prescribed for the post as they existed immediately prior to the impugned amendment should not have been changed and that direct recruitment should not have been resorted to. Prior to the amendment of the Rules, knowledge of typewriting was not one of the prescribed qualifications for promotion from the post of Laboratory Assistant to the post of Technical Assistant. Prior to the amendment, appointment to all these posts could be made by way of promotion failing which by way of direct recruitment. The Rules which were first promulgated in 1969 were themselves amended in 1972 and notified in 1973. Under the impugned amendment, these posts are to be filled in only by way of direct recruitment and all persons possessing the educational and other qualifications mentioned in Column 8 thereto were eligible to be considered. These qualifi-

68

✓
cations are as under:-

"1. Graduate in Science with minimum experience of 3 years in a testing institution.

OR

Intermediate in Science having 5 years experience in a testing institution.

2. Knowledge of typing with a minimum speed of 30 words per minute.

3. Experience in the procurement and handling of stores of the Laboratory."

These Rules have been amended in exercise of the powers conferred by the proviso to Article 309 of the Constitution and enforced in supersession of the Central Indian Pharmacopoeia Laboratory, Ghaziabad (Class III and Class IV Posts) Recruitment Rules, 1969 in so far as they relate to the post of Technical Assistant. The 1969 Rules were also framed in exercise of the power conferred by the proviso to Article 309 of the Constitution. The competence of the Rule Making Authority to amend the Rules is not in dispute. Now the question is whether the amendment violates any fundamental right of the applicant guaranteed to him under Articles 14 & 16 of the Constitution. Merely because under the unamended Rules, appointment to these posts could be made by way of promotion even of persons who did not possess either knowledge of typewriting or a certificate in typewriting, it does not vest in them the right to claim that the rule should be ~~continued~~ unaltered for all time ~~to~~ come; much less does it divest the power of the competent Rule Making Authority to amend the existing Rules or substitute a proper rule. If the Rule Making

✓
for

Authority in its wisdom, in view of the fact that several persons with sufficient knowledge of typewriting with the minimum speed of 30 words per minute are available, thought it advisable to prescribe it as one of the essential qualifications for appointment to the post of Technical Assistant, that cannot be said to be unreasonable or arbitrary or colourable exercise of legislative power. In fact prescribing such a qualification which secures efficiency in service is in the best interests of administration. Unless ~~xxxx~~ Rules are shown to be violative of Articles 14 or 16 of the Constitution or any other Fundamental Right guaranteed to a citizen, a Rule made by a Competent Authority cannot be struck down. That apart, if a Technical Assistant is required to possess knowledge in typewriting, we ^{present} do not think, in the ^{age}, it could be deemed to be irrational, unreasonable or arbitrary Rule and liable to be struck down.

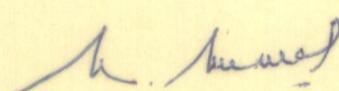
3. No person has a vested right to promotion. When the promotion is governed by Rules framed under the proviso to Article 309 of the Constitution, merely because some persons who were qualified under the then existing Rules do not qualify for promotion under the amended Rules, the amended Rules cannot be struck down.

4. Learned counsel for the applicant Shri B.S. Charya, contends that if the Rule is ultra vires, just as an Industrial Tribunal, this Tribunal can also make a fresh contract of employment for the parties and direct the Respondents to make appointments ignoring the Rules. We are afraid we cannot do so.

Sanj

Even an Industrial Tribunal cannot ignore the Statutory Rules; much less can it direct any authority to make appointments ignoring the standing orders or the Statutory Rules. Only in an area not covered by the standing orders, for Statutory Rules or an award/ensuring industrial peace and harmonious relations between the employer and the employee, an Industrial Tribunal may adjust the contractual obligations of the parties; but certainly it cannot give any direction contrary to the Statutory Rules or standing orders. This Tribunal too cannot direct the Respondents to ignore the Statutory Rules and make appointments in derogation thereof.

5. This application, therefore, fails and is accordingly dismissed.



(KAUSHAL KUMAR)
MEMBER



(K. MADHAVA REDDY)
CHAIRMAN

8.8.1988