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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

O.A.No.214/86.

Date of decision: 1-2-93.

Har Bhagwan & Others

...Applicants

Vs.

Union of India & Others

...Respondents

CORAM:

THE HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K.RASGOTRA, MEMBER(A).

For the applicants

...Shri M. Chandersekharan,
Sr. Counsel with Shri
Madhav Panikar, Counsel.

For the respondents

...Shri A.K.Behra, counsel
for Shri P.H.Ramchandani
Sr. Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S.Malimath, Chairman):

The three petitioners in this case started their career as Lower Division Clerks in the Ministry of Home Affairs. The next promotional cadre available to them is Upper Division Clerks. The Central Secretariat Clerical Service Rules, 1962 are the statutory rules governing the promotion to the cadre of Upper Division Clerks. Rule 11 of the Rules provides for promotion to the cadre of Upper Division Clerks by two methods, namely, promotion on the principle of seniority-cum-merit subject to the rejection of unfit from amongst the eligible candidates and promotion from amongst the eligible candidates on the basis of the Limited Departmental Examination. The statutory rule governing ^{seniority} is Regulation 2 appended in the 3rd Schedule to the Rules. The Regulation 2 reads as follows :-

✓ " 2. Maintenance. - (1) Subject to the provision

of Clause (2) of this regulation, additions to the Select List in any cadre after its constitution under regulation 1 shall be made in such numbers as the cadre authority may determine from time to time, keeping in view the existing and anticipated vacancies, and in the proportion of 3 : 1 from -

- (a) Officers of the Lower Division Grade in that Cadre who have rendered not less than eight years' approved service in the grade and are within the range of seniority in that grade subject to the rejection of the unfit;

Provided that where an officer of the Lower Division Grade is rejected as unfit, the reasons for such rejection shall be recorded in writing and communicated to the officer concerned; and

- (b) members of the Lower Division Grade selected on the results of the Limited departmental/ examinations held by the Staff Selection Commission for this purpose from time to time in the order of their merit.

/competitive

Persons of the two categories referred to above being included in the select List by taking alternatively three persons from category (a) and one person from category (b) above, and so on, in that order.

NOTE - If officers within the range of seniority are not available in a cadre for making additions to the Select List from officers of category (a) above, such additions shall be made from a panel, furnished by the Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs of officers serving in the other cadres. *

It is thus clear that the names of persons promoted by both the methods have to be included in a common list called the Select List by taking alternatively three persons from the category of promotees on the basis of seniority-cum-merit and one person coming from promotion in pursuance of the Limited Departmental Competitive Examination. So far as the

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petitioners are concerned, all of them have been given promotion on 7-4-1980. 1500 new posts of Upper Division Clerks were sanctioned. Steps were taken to fill up the vacancies by both the methods of promotion prescribed by the Rules. All the petitioners claim promotion on the basis of the principle of seniority-cum-merit subject to the rejection of unfit. A seniority list of all the promotees promoted by both the modes was made on 21-8-1982 in which the three petitioners were given ranks at serial nos. 425, 449 and 463. The said list is now sought to be revised by the impugned order dated the 19th of December, 1984. The petitioners have been assigned in this seniority list ranks at serial nos. 399, 420 and 431. But, some of the persons who were shown as juniors to them in the seniority list of 1982 have now been shown as seniors to the petitioners. It is in this background that the petitioners have approached this Tribunal for appropriate relief in regard to their seniority. It is the seniority list of 19.12.84 produced as Annexure -5 that is the subject matter of challenge in these proceedings.

2. The principal contention of Shri Chandrasekharan, learned counsel for the petitioners, is that the impugned seniority list has been prepared violating Regulation 2 in the 3rd Schedule to the Rules which prescribes the manner in which the names of persons promoted by following the two methods should be arranged. As already stated, their names should be

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arranged alternatively in the ratio of 3:1. Our attention was drawn to the names at serial no.379 to 398 in the impugned seniority list. All these are persons who were promoted by following the second method, namely, on the basis of the result of the Limited Departmental Examination. All of them have been shown as having qualified ⁱⁿ the Limited Departmental Examination held in the year 1980. Entry in column no.5 regarding date of continuous officiation in the cadre of Upper Division Clerk indicates that all of them were continuously officiating from not earlier than July, 1981. The names of persons promoted by following the first method, namely, on the principle of seniority-cum-merit, subject to the rejection of unfit, have been included between serial nos. 379 to 398. It is not the case of the respondents that no persons were available for being promoted by following the first method. On the contrary, the seniority list itself shows that the persons like the petitioners were actually promoted in the year 1980. No other satisfactory reason has been assigned as to why the mandate of Regulation 2 of arranging the persons promoted by the two methods alternatively have not been followed. We have, therefore, no hesitation in taking the view that the impugned seniority list has been prepared ignoring the mandate of Regulation 2 in regard to arranging the names of persons promoted by both the modes. If the Regulation 2 was properly followed, the persons promoted following the first method would have secured

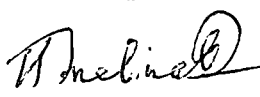
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higher rankings. We are, therefore, satisfied that the grievance brought by the petitioners before us requires redressal by appropriate directions. But it is maintained by the learned counsel for the respondents that there is a fetter in the way because of the order produced along with the reply as Annexure R-2 dated 17-12-81. That is the official memorandum issued by the Under Secretary to the Govt. of India which restricted the number of persons to be included in the zone for making addition to the Select List of Upper Division Clerks through seniority quota. The number fixed is 681 for according regular promotion in accordance with rules to the cadre of Upper Division Clerks. On the strength of the said order, it was maintained that if the names of the petitioners do not fall within the said number, they would not^{be} entitled to be included in the seniority list of promotees of the Upper Division Clerks. It is not the case of the respondents that it is the want of vacancies or want of eligible persons that has come in their way of considering the cases of eligible persons for promotion to the Upper Division Clerks cadre by following the first method. The contention is that by order dated 17th December, 1981 annexure R-2, the zone of consideration has been restricted. The seniority list of regular promotees cannot be included in the names of persons who are beyond the zone prescribed by the order Annexure R-2. As the petitioners have a fundamental right to equality of opportunity in the matter of

appointment, they cannot be denied the consideration for appointment to the cadre of Upper Division Clerks if they possess the prescribed eligibility ~~of~~ qualifications and vacancies are available which the authorities have decided not to fill up. That being the position, limitation on consideration of the case of eligible persons who come within the zone of consideration in accordance with the rules, by the order dated 17th of December 1981 would deprive their fundamental right to equality of opportunity under Article 14 and 16 of the Constitution. We, therefore, declare that the order Annexure R-2 dated 17-12-1981 shall not come in the way of the petitioners' according promotion and appropriate rankings in the seniority list of Upper Division Clerks in accordance with the relevant rules and regulations discussed above in respect of the sanctioned posts of Upper Division Clerks.

3. For the reasons stated above, this petition is allowed and the respondents are directed to recast the seniority list of Upper Division Clerks in accordance with Regulation 2 appended as 3rd Schedule to the Central Secretariat Clerical Service Rules, 1962, giving an opportunity to all the persons likely to be affected by such decision, within a period of six months from the date of receipt of a copy of this judgment. No costs.


(I.K. RASGOTRA)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN

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