

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.449/86

DATE OF DECISION: 6.2.1992.

S.N. KOTHIAL

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

T-99/86

M.N. BHATT

...PLAINTIFF

VERSUS

UNION OF INDIA

...DEFENDANTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI VIVEKANAND, COUNSEL

FOR THE RESPONDENTS NONE

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

Heard the learned counsel for the applicants.

2. OA NO.449/86 and T-99/86 are based substantially on the same set of facts and raise identical issues of law. We, therefore, propose to deal with both the cases through this common judgement.

3. The facts of the case in OA No.449/86, however, for the purpose of simplification are referred to hereunder in detail.

4. The short question involved in this Original Application (No. 449/86) is whether the applicant who was appointed as Draftman Grade 'B' in accordance with the "Roads Wing (Subordinate Technical Staff) Recruitment Rules, 1986" by promotion from Grade 'C'/by direct recruitment against the 50% vacancies meant for candidates who come through competitive examination limited to Draftsmen Grade 'C'; can be assigned seniority below those Drafts-

21

men Grade 'B' who were appointed against the said vacancies as provided in the Recruitment Rules issued vide Gazette Notification dated 11.6.1977, in supersession of 1966 Rules.

5. The 1966 rules provided the following methods of recruitment to Draftsmen Grade 'B':-

- i) 25% by direct recruitment.
- ii) 25% by promotions from Draftsmen Grade 'C' on the basis of seniority in the Grade 'C'.
- iii) 50% by competitive examination limited to Draftsmen Grade 'C'.

The applicant herein was appointed as Draftsman Grade 'B' on seniority-cum-suitability basis initially on adhoc basis on 26.10.1972 and later on regular basis vide order NO.63/77 dated 23.5.1977.

The learned counsel for the applicant averred that no recruitment to Draftsman Grade 'B' was made by the third method viz. Limited Departmental Competitive Examination (LDCE) in terms of 1966 Rules from 6.12.1966 when the 1966 rules were notified upto 11.6.1977 when the revised Recruitment Rules were notified. Thus the vacancies earmarked for recruitment through LDCE method were appropriated for filling up by direct recruitment/promotion. The learned counsel, therefore, contended that as the rota quota rule of 1:1:2 had collapsed, therefore, the vacancies available under the LDCE method of recruitment could not be carried forward. The revised recruitment rules were promulgated by the respondents on 11 June, 1977 in supersession of 1966 Rules as is evident from the opening sentence of notification:

"In exercise of the powers conferred by the provisions of Article 309 of the Constitution and in supersession of the Roads Wing (Subordinate Technical Staff) Recruitment Rules, 1966. The President hereby makes the following rules...."

The learned counsel, therefore, submitted that the 1977 rules were in supersession of the 1966 rules and did not merely purport to amend one of the methods of recruitment. Further they came into effect from the date the said rules were notified in the Gazette of India.

6. The revised recruitment rules of 1977 prescribe three methods of recruitment to Draftsman 'B' as given below:-

- a) 25% by direct recruitment.
- b) 25% by departmental promotions from Draftsmen grade 'C' with 3 years service in the grade.
- c) 50% by promotion of Draftsmen Grade 'C' possessing Draftsman/Overseer's Certificate from a recognised institution/or equivalent and Draftsman Grade 'C' not possessing such qualification but having passed a departmental qualifying test: failing (i) (ii) & (iii) by transfer.

In pursuance of the revised recruitment rules the respondents held a departmental qualifying test in 1978, i.e., after the 1977 rules came into force and promoted 14 persons as Draftsmen grade 'B' vide order dated 27.6.1978 by virtue of their having passed the qualifying test or possessing the Draftsman/Overseer's certificate as per Rules of June, 1977. All the 14 persons so appointed have been placed above the applicant in the provisional seniority list issued on 14.6.1982. The applicant submitted his objections to the seniority assigned to him vide letter dated 7.7.1982, but this did not bring about any change and was issued on 12.11.1982/ 14.1.1983.

7. The main point made by the respondents in their counter-affidavit is that 1977 rules amended the 1966 rules to the extent they related to method 'C' of the recruitment and that too was done at the insistence

13

of Draftsman Grade 'C'. The other two methods remained unchanged and, therefore, the recruitment made against the method 'C' viz. recruitment for 50% vacancies through departmental qualifying examination/Draftsmen/Overseer's certificate holders should be deemed to be taken as having been made to fill up the vacancies which were available for filling up in terms of 1966 recruitment rules. It is not disputed that the applicant was promoted on adhoc basis initially in 1972 and on regular basis w.e.f. 23.5.1977 as Draftsman grade 'B'.

8. We have given our careful consideration to the submissions made by the learned counsel for the applicant and perused the counter-affidavit of the respondents carefully. We are of the view that the recruitment rules, 1977 were in supersession of the recruitment rules 1966 and the 1977 recruitment rules came into force from the date they were notified in the Gazette dated 11.6.1977. The recruitment made in terms of 1977 Rules to Draftsman Grade 'B' cannot, therefore, be deemed to be recruitment under the 1966 rules and application of Rota Quota 1:1:2 to applicants under 1966 Rules and those appointed after the lapse of several years under 1977 Rules is irregular and cannot be sustained legally. The 1977 Rules are applicable prospectively and cannot regulate the seniority of those who were appointed as Draftsmen Grade 'B' in accordance with 1966 Rules - much before the 1977 Rules came into effect.

We also observe that for 11 years, i.e., from 1966 to 1977 there was no recruitment through the method (iii) of para 5 above to Draftsman Grade 'B' in terms of 1966 Rules. Thus effectively the method (iii) of recruitment of 1966 rules remained ineffectual


21

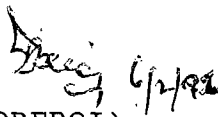
during that period. The vacancies which had been filled up initially on adhoc basis and followed by regularisation of the incumbents in accordance with the 1966 Rules cannot be rotated for assigning seniority to those who were appointed in accordance with 1977 Rules.

In the above conspectus of the case we set aside and quash the seniority list of 14.6.1982/12.11.1982/14.1.1983 to the extent that the applicant's shall be assigned at appropriate seniority above the 14 persons who were recruited as Draftsmen grade 'B' on the basis of qualifying examination by virtue of possessing Draftsman/Overseer's certificate in terms of 1977 rules. If in accordance with the revised seniority list, as ordered above, the applicant becomes eligible for consideration to further promotion, he shall be considered for the same by holding a DPC/review DPC. He shall, however, be fixed only on notional basis in the higher grade with actual payment from the date he takes over the position in the higher grade. We order accordingly.

The Plaintiff in T-99/86 shall also be entitled to the same reliefs for the reasons adduced above, as have been granted to the applicant in the above O.A. (449/86).

We further direct that these orders shall be implemented by the respondents most expeditiously but preferably within 12 weeks from the date of communication of this order. No costs.

  
(I.K. RASBOTRA)  
MEMBER(A)

  
(T.S. OBEROI)  
MEMBER(J)

6.2.1992.