

In the Central Administrative Tribunal
Principal Bench, New Delhi.

Regn. No.

Date: 17.7.1992

1. OA-441/86

Shri O.P. Viksit Applicant

Versus

Chief Secretary, Delhi Respondents
Admn. & Others

2. OA-667/86

Shri C.K. Sharma Applicant

Versus

Lt. Governor, Delhi Respondents
Administration & Ors.

For the Applicant in In person
1 above

For the Applicant in Shri R.L. Sethi, Advocate
2 above

For Respondent No.2 in Shri G.D. Gupta, Advocate
1 above

For Respondents 5 in Shri M.K. Gupta, Advocate
2 above

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman(Judl.)
Hon'ble Mr. B.N. Dhoundiyal, Administrative 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*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

As common questions of law have been raised in these
two applications, it is proposed to deal with them in a
common judgement. The common question of law involved

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is whether the Delhi Administration were within their

rights in promoting officers to the post of Principal,

ITIs on ad hoc basis contrary to the existing recruitment

rules and in accordance with the proposed amendment of the recruitment rules.

2. When OA-441/86 was taken up for hearing on 30.6.92,

the applicant appeared in person and argued this case. On

1.7.1992, Shri G.D. Gupta, the learned counsel for respondent

No.2 appeared and sought time to file written arguments by

14.7.1992. We have considered the arguments advanced by

both the parties. When OA-667/86 was taken up for hearing

on 8.7.1992, Shri R.L. Sethi appeared for the applicant and

Shri M.K. Gupta for respondent No.5. Shri Sethi submitted

that OA-441/86 also raises similar issues and both the

applications could be disposed of together.

3. At the outset, it may be stated that on 23.3.1990,

the Delhi Administration had issued an order whereby the

applicant in OA-441/86 had been promoted to the grade of

Principal w.e.f. 27.2.1990. The applicant in OA-667/86

has not so far been promoted. However, S/Shri S.K. Mishra,

Ram Nath Ram and H.C. Gadeganwalla, who have been impleaded

as respondents in both these applications, have been

promoted as Principal by the above mentioned order dated

23.3.1990.

4. The applicants in both the applications hold Degrees in Engineering. S/Shri Mishra, Ram Nath Ram and Gadeganwalia, possess only Diploma in Engineering. The applicants have called in question the grant of ad hoc promotion to the diploma holders, overlooking the claims of the degree holders, which is contrary to the provisions of the extant recruitment rules. The Delhi Administration as well as the affected respondents, have contended that their ad hoc promotions were in accordance with the proposed amendment of the recruitment rules and that there was nothing improper or illegal in making such promotions.

5. It may be mentioned at the outset that the applicant in OA-667/86 had filed MP-2347/89 on 6.10.1989, wherein he had stated that the Delhi Administration had notified the amendment of the recruitment rules on 26.7.1989. He had prayed that the revised recruitment rules be kept in abeyance and that the vacant posts of Principal be continued to be filled on the basis of the unamended rules on regular basis. On 4.12.1989, the learned counsel for the applicant in MP-2347/89 submitted that he wanted to withdraw the same on the ground that a separate O.A. had already been filed by him. Accordingly, the Tribunal allowed the said M.P. to be withdrawn and it was dismissed as withdrawn.

6. From 1967 to 1989, the recruitment rules have undergone changes. In 1967, there were posts of Principal in two grades in the Directorate of Employment & Training - Rs. 700-1100, and Rs. 400-950. According to the Directorate of Employment & Training, Delhi Administration (Class I Posts) Recruitment Rules, 1967, for the posts of Principal, in I.T.I. Rusa/Arab-ki-Sarai, which were in the scale of Rs. 700-1150, the educational and other qualifications prescribed for direct recruitment were Degree in Mechanical/ Electrical Engineering of a recognised University or equivalent and about 5 years' professional or teaching experience of which at least two years should be in a training institute. For the other two posts of Principal in the scale of Rs. 400-950, the qualifications prescribed were: Degree in Mechanical/Electrical Engineering of a recognised University or equivalent, preferably with two years' professional or teaching experience, or Diploma in Mechanical Engineering of a recognised University or equivalent and about 7 years' professional or teaching experience in reputed concern, or a training institute. 33 1/3 per cent from amongst Principals of I.T.I.s in the pay scale of Rs. 400-950 with three years' service were eligible for promotion to the next higher grade.

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7. The 1967 rules were amended by notification dated 19.8.1981. The 1981 Rules provided that for the posts of Principal, I.T.I., Pusa and Arab-ki-Sarai, in the scale of Rs.1100-1600, the educational and other qualifications required for direct recruitment were at least 2nd Class Degree in Mechanical/Electrical/Civil Engineering/Technology of a recognised University or equivalent and five years' professional or teaching experience in the subject concerned of which at least two years should be in a supervisory capacity in a reputed concern or in a training institute. For the posts of Principal in ITIs, Malviya Nagar/Shahdara, Training Evaluation Officer and Senior Surveyor in the scale of pay of Rs.700-1300, the qualifications prescribed were, at least 2nd Class Degree in Mechanical/Electrical/Civil Engineering/Technology from a recognised University or equivalent and three years' professional experience in the subject concerned, preferably in teaching. $33\frac{1}{3}$ per cent from the Principal, ITI, Malviya Nagar/Shahdara, Senior Surveyor and Training Evaluation Officer in the revised scale of Rs.700-1300 with five years' service in the grade, were eligible for promotion to the next higher grade.

8. The 1981 Rules were further amended by notification dated 26.7.1989. The 1989 Rules provide, inter alia, that

Principals/Senior Surveyors/Training Evaluation Officers

in the scale of pay of Rs. 2200-4000 holding Degree in

Engineering Technology in the subject concerned or its

equivalent, are eligible for promotion to the next higher

grade in the scale of Rs. 3000-4500 to the extent of $33\frac{1}{3}$

per cent. A note also has been inserted in the Rules

to the effect that "the requirements about the educational

qualifications shall not be applicable in the case of

departmental candidates holding the feeder posts on regular

basis on the date of promulgation of these Rules."

9. The Delhi Administration have stated in the

counter-affidavit filed by them that diploma holders

were given ad hoc promotion pending the amendment of the

Recruitment Rules of 1981 as a result of representations

received from departmental candidates and on the basis of

a decision taken by the Delhi Administration to amend the

Rules so as to give promotional avenues to the departmental

candidates who were only possessing Diplomas and not Degrees

in the prescribed subjects. The Delhi Administration also

stated that after a decision was taken to amend the Rules

and to insert a note under the Rules as extracted above,

the U.P. S. C. had also agreed in principle to the proposed

amendment. As the processing of the amendment was likely

to take time and as the vacant posts were required to be

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filled up for the effective functioning of the Industrial Training Institutes, the respondents filled them up on ad hoc basis vide order dated 21.8.1984. The persons so promoted on ad hoc basis were Diploma holders but had acquired long experience in the department. The applicant in OA-667/86 has stated that Shri Mishra had 19 years' experience to his credit, while Shri Gadeganwalla had 11 years, and Shri Ram Nath Ram 12 years' experience.

The respondents have stated that even though the applicant in OA-667/86 had the requisite qualifications of Degree in Engineering, yet he had not completed five years' regular service on the post of Principal/Training Evaluation Officer/Senior Surveyor in the scale of Rs.700-1300, which was a requisite provision in the Recruitment Rules of 1981. As regards Shri Gadeganwalla, the respondents have stated that he belongs to the Scheduled Caste community and that he was promoted against the post falling on the point reserved for Scheduled Castes.

The basic question arising for consideration in these applications is whether the posts of Principal, ITIs in the pay scale of Rs.3000-4500 could be filled up on ad hoc basis on the basis of the qualifications in the proposed amendment of the Recruitment Rules, while the process of amendment of the Recruitment Rules had already been set in motion. Merely because some vacancies existed

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during the interim period when the process of amendment of Recruitment Rules was underway, the applicants cannot be said to have acquired a vested right to promotion.

The respondents have stated in their counter-affidavit that the decision to amend the Recruitment Rules so as to make the departmental candidates holding only diplomas, also eligible for promotion, was initiated with a view to providing promotional avenues to them and avoiding frustration in the department. The departmental officers had also given representations in this regard which had been accepted by the Delhi Administration on policy considerations. What further remained to be done, was only the formal amendment of the Rules. In our opinion, the Delhi Administration cannot be said to have proceeded in the matter with any ulterior motives or with a view to favouring anyone. The decision of the Government not to make promotions under the 1981 Rules, cannot, therefore, be held to be arbitrary or unreasonable (Vide Shri P.K. Jaiswal Vs. M.S. Debi Mukherjee & Others, 1992 (1) SCALE 120). The allegation of mala fides and favouritism made by the applicants, has not been substantiated.

11. In the light of the foregoing discussion, we are of the opinion that the applicants are not entitled to the reliefs sought by them in these applications. We,

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however, make it clear that the period of ad hoc ^{respondents} officiation in the higher posts by the ^{applicants} will not count for seniority, and that the seniority should be determined in accordance with the relevant recruitment rules and instructions on the subject.

The applications are, therefore, dismissed with the aforesaid observations. There will be no order as to costs.

12. Let a copy of this order be placed in both the case files.

(B.N. Dhoundiyal)
Administrative Member

(P.K. Kartha)
Vice-Chairman (Judl.)

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(PURAN CHAND)

Central Administrative Tribunal
Principal Bench
Constitution Bench
New Delhi