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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 817 of 1986 198
T.A. No.

DATE OF DECISION 3.2.88

Shri S.R. Gautam Petitioner

Shri K.K. Malhotra Advocate for the Petitioner(s)

Versus

Min. of Food & Civil Supplies Respondent

and another
Mr. K.C. Mittal Advocate for the Respondent(s)
Mr. R. Venkataramani, Advocates

CORAM :

The Hon'ble Mr. JUSTICE J.D. JAIN, Vice-Chairman

The Hon'ble Mr. Birbal Nath, 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.*
3. Whether their Lordships wish to see the fair copy of the Judgement?

31/7/88
(Birbal Nath)
Administrative Member

J.D. Jain
(J.D. Jain)
Vice-Chairman

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Regn.No. OA 817/86

DATE OF DECISION 3.2.88

Shri S.R. Gautam

... Petitioner

Versus

Ministry of Food & Civil Supplies
and another

... Respondents

For Petitioner: Mr. K.K. Malhotra, Advocate

For Respondents: Mr. K.C. Mittal, Advocate for Respondent No.1
Mr. R. Venkataramani with Mr. S.M. Garg,
Advocates for respondent No.2.

CORAM: HON'BLE MR. JUSTICE J.D. JAIN, VICE-CHAIRMAN
HON'BLE MR. BIRBAL NATH, ADMINISTRATIVE MEMBER

JUDGMENT:

(Judgment of the Bench delivered by Mr. Justice
J.D.Jain, Vice-Chairman)

The petitioner, who is employed as Senior Computer in the Department of Food, Ministry of Food & Civil Supplies, Government of India, seeks to challenge in this application under Section 19 of the Administrative Tribunals Act, 1985 (for short "the Act") his non-promotion to one of the two posts of Statistical Investigator as a departmental candidate and has called in question the promotion to the said post of Shri R.G.Vijayan, respondent No.2, w.e.f. 8.9.86 vide Government of India, Ministry of Food & Civil Supplies (Department of Food) Notification dated 5.9.86 on the ground that the later was not at all eligible for promotion to the said post under the relevant rules called, the ^{Department of Food} Ministry of Food & Civil Supplies/ (Food and Nutrition Board) Statistical Investigator Recruitment Rules, 1986 (hereinafter referred to as "the Recruitment Rules").

2. The controversy in this case lies in a very narrow compass, the sole point for determination being whether Shri R.G. Vijayan, respondent No.2 was eligible for Recruitment promotion to the post of Statistical Investigator under the Rules or not. The undisputed facts of the case are that the petitioner joined service as a Computer in the Department of Food, Ministry of Food & Civil Supplies and was later on promoted as a Senior Computer w.e.f. 22.1.74, in the scale of Rs.330-560 on which post he has been regularly working since then. Shri R.G. Vijayan, respondent No.2 was appointed as Field Investigator(S) on 25.6.73 which carried the same ^{pay} scale of Rs.330-560. However, vide Government of India, Ministry of Agriculture, Department of Food's letter dated 1.1.81 the scale of pay of Field Investigator in the Diet & Nutrition ^{Survey of} Department of Food was revised to Rs.380-640 w.e.f. the date of the issue of the said letter, viz., 1.1.81. Still later, the ^{Recruitment} Rules were framed and notified vide Government of India, Ministry of Food & Civil Supplies Order dated 23.1.86 for recruitment to the post of Statistical Investigator which carried the pay-scale of Rs.550-750-EB-30-900 and was a selection post. There were six posts of Statistical Investigator at that time, but the number was subject to variation depending on work load. All the posts of Statistical Investigator had been filled up ^{by} having deputationists from other departments. However, on the coming into force of the Recruitment Rules, two vacancies of Statistical Investigator out of the four anticipated vacancies were decided to be filled by two eligible officers from the feeder cadres, namely, Field Investigator(S) and Senior Computer. The four anticipated vacancies were likely to arise on reversion of four deputationists and two of those vacancies fell on points 1 and 4 which were to be filled by promotion of eligible officers, in

feeder cadres, ~~in that~~ one of the posts was meant for general category officer and ~~while~~ the other was reserved for Scheduled Caste. The Recruitment Rules lay down the following eligibility criteria for officers belonging to the feeder cadres for promotion:-

"Promotion:

Field Investigator (Statistics) with 6 years regular service in the grade and Senior Computer with 10 years' regular service in the grade.

Note: The eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the qualifying service in the respective grade/post."

Since the deputationists ~~were~~ already holding the posts of Statistical Investigator were being repatriated to their parent department, ~~and~~ the following Field Investigators and Senior Computers were considered by the Departmental Promotion Committee which met on 16.6.86:

Sl.No.	Name	Designation	Date of appointment to the post
1.	Shri R.G. Vijayan	Field Investigator(s)	25.6.73
2.	Smt. Kamlesh Singhal	Field Investigator(s)	17.1.74
3.	Shri Rajinder Singh (SG)	Sr. Computer	22.1.73
4.	Shri S.R. Gautam	Sr. Computer	22.1.74
5.	Shri B.K. Sharma	Field Investigator(s)	14.3.77

The D.P.C. on examination of the character rolls of the above-mentioned officials recommended Shri R.G. Vijayan, respondent No.2, against general point ~~and~~ vacancy and Shri Rajinder Singh against the point reserved for Scheduled Castes for promotion to the post of Statistical Investigator. It may be pertinent to mention here that

while the performance of Shri R.G. Vijayan was assessed "very good", the performance of all others was rated as "good". On the basis of the above assessment, therefore, promotions were made by the Government vide Notification dated 5.9.86 as mentioned above.

3. The contention of the petitioner precisely is that the pay scale of the post of Field Investigator in the Diet & Nutrition Survey of the Food Department having been revised w.e.f. 1.1.81, Shri Vijayan not having rendered the six years requisite service in the revised scale was not at all eligible and as such, he could not be considered for promotion. On the contrary, he, i.e., the petitioner, having been promoted as Senior Computer w.e.f. 22.1.74 had put in regular 10 years of service at the time of consideration by the D.P.C. and as such, he was eligible for promotion but was wrongly ignored because of an ineligible candidate having been promoted against the Recruitment Rules.

4. We have given our careful thought and consideration to the matter. On a plain reading of the eligibility criteria for promotion to the post of Statistical Investigator, it is clear that the Field Investigator (S) was required to put in six years regular service in the grade while a senior Computer was required to put in 10 years regular service in the grade. The petitioner is evidently interpreting the expression "in the grade" as being equivalent to or synonymous with "in the pay scale". Having regard to the context in which the word "grade" has been used in the rule,

contd...

it is difficult to see how it can be construed as implying revised pay scale as such, especially, when the note below the main eligibility criteria has used the expression "qualifying service in the respective grade/post". It will evidently imply that the qualifying service may be rendered in the respective grades or posts held by the candidates in the feeder cadres. The note is obviously clarificatory in nature and is designed to convey the sense in which the word "grade" has been used in the main body of the rule. It is well settled that a statute, even more than a contract, must be construed, ut res magis valeat quam pereat, so that the intentions of the legislature may not be treated as vain or left to operate in the air. "It is a good general rule in jurisprudence", said the Judicial Committee in Ditcher V. Denison (1857) 11 Moore P.C. 325, (337) -

"that one who reads a legal document whether public or private, should not be prompt to ascribe - should not, without necessity or some sound reason, impute - to its language tautology or superfluity, and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use".

The rule that a meaning should, if possible, be given to every word in the Statute implies that unless there is a good reason to the contrary the words add something which has not been said immediately before. (See: Craies on Statute Law, Seventh Edition at pages 103-105). In this view of the matter, therefore, the word "post" added in the note to the word "grade" cannot be read as superfluous or redundant. So, the service rendered by a Field Investigator/Senior Computer on the respective post held by him for the requisite period would qualify him for ~~the~~ promotion to the post of Statistical Investigator. The word "post" has not been defined anywhere, but as observed by Ray, J. (as his Lordship then was) in P.R. Nayak Vs. Union of India: AIR 1972 SC 554 -

spoke of 'office' and thereafter Fundamental Rule 56(f) spoke of 'post'. The word 'post' and its previous counter part the word 'office' mean position in service."

Likewise, in the State of Assam and others Vs. Kanak

Chandra Dutta:AIR 1967 SC 884, it was observed:-

"A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post".

5. Hence, having regard to the service rendered by respondent No.2, Shri R.G. Vijayan in the post of Field Investigator(S) for more than six years, there can be no room for doubt that he was duly qualified and eligible for promotion to the post of Statistical Investigator. The mere fact that the pay scale of the post was revised upward w.e.f. 1.1.81 would hardly matter because the nature of the duties to be discharged by the incumbent on the said post and the degree of responsibility which the same carried remained the same. It will, therefore, make no sense to say that only the service rendered by respondent No.2 subsequent to the revision of the pay scale of the said post could be counted for the purpose of eligibility for promotion. Such an interpretation would have the unintended result of depriving respondent No.2 of his entire past service as Field Investigator(S). merely because prior to 1.1.81 it carried the same pay scale as the post of Senior Computer held by the petitioner. Even assuming for the sake of argument that there had been no revision of pay scale, the eligibility condition for the Field Investigator (S) and the Senior Computer as prescribed in the Rules would have held good.

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It is for the obvious reason that the pay scale of the post of Field Investigator (S) was revised not with a view to upgrade the post, but in order to do justice to the Field Investigators who were obviously discharging duties of more onerous nature and carrying a higher degree of responsibilities. This is evident from a perusal of Government of India order dated 1.1.81 itself which states that the revision was made because of the representation of the Field Investigators in the Diet and Nutrition Survey of the Department of Food that they be accorded parity in the matter of pay scale with their counter parts in the National Sample Survey Organisation of the Department of Statistics (Ministry of Planning). The mere fact that prior to the revision of the pay scale of Field Investigator (S), the pay scales of both the posts, Field Investigator(S) and Senior Computer, were the same, would not warrant the conclusion that the posts were equal in grade. It is now well settled that the true criterion for equivalence is the status and the nature^{and} of the responsibility^{the} of ~~the~~ duties attached to ^{the} two posts. The mere circumstance that the two posts are carried on the same scale of pay is not enough. (See: Vice-Chancellor, L.N. Mithila University Vs. Dayanand Jha (1986) 3 S.C.C.7.) Hence the interpretation sought to be put by the petitioner on the word 'grade' is wholly untenable as being too narrow^{and} /pendentic. More so, it seeks to ignore altogether the word "post" which follows the word 'grade' in the note below the main body of the rule.

6. The learned counsel for the respondents has also invited our attention to the following observations

of the Supreme Court in A.K. Subraman and others
Vs. Union of India and others : AIR 1975 SC 483:-

"Now the question which arises for consideration is what is the meaning of the words "vacancies in the grade of Executive Engineer" as used in the aforesaid paragraph of Rule 4(2). When does a vacancy in the grade of Executive Engineer arise? To answer this question it is necessary to ascertain what are the posts which the grade of Executive Engineer consists of, for the vacancies can only be in the posts in the grade of Executive Engineer. The word "grade" has various shades of meaning in the service jurisprudence. It is sometimes used to denote a pay scale and sometimes a cadre. Here it is obviously used in the sense of cadre. A cadre may consist only of permanent posts or sometimes, as is quite common these days, also of temporary posts." (Emphasis supplied)

Having regard to the context, therefore, in which the word "grade/post" has been used in the instant case, we are of the considered opinion that in the instant case, the word "grade" means a cadre and not merely a scale of pay as has been urged by the learned counsel for the petitioner. In other words, the qualifying service for a Field Investigator (S) would be six years in that post irrespective of whether its scale had been revised upwards or not. Even otherwise, it will be highly inequitable that the previous service of the respondent No.2 which was in the same scale of pay as that of the petitioner ^{altogether} is ignored because of the upward revision of the pay scale. Obviously, respondent No.2 would have been eligible on account of his having rendered 10 years of service as Field Investigator in the pay scale which was equivalent to that of the petitioner had there been no upward revision of the pay scale of his post. So looked at from this angle too, it cannot be said by any stretch of reasoning

that the petitioner could steal a march over respondent No.2 on the facile plea that he was not eligible on account of not having rendered service for six years in the revised scale of the post of Field Investigator(S). Hence, this argument of the learned counsel for the petitioner is not only fallacious but wholly untenable.

7. It bears repetition that the respondent No.2, Shri R.G. Vijayan had been graded as 'Very good' while all the rest were graded 'good'. Since the post of Statistical Investigator is a selection post, he had to be preferred ^{to} ~~over~~ the petitioner and there being only one vacancy at general point, the petitioner could not be selected in preference to respondent No.2. Hence this application is totally devoid of any merit.

8. Before concluding, however, we may make a passing reference to the subsequent events which apparently have a bearing on the point in issue. We are told that the post of Senior Computer held by the petitioner has since been declared surplus w.e.f. 31.12.86 on closure of D.N.S. Unit of the Department of Food and the petitioner was declared surplus on that account. However, he has been redeployed through Surplus Cell as a U.D.C. w.e.f. 31.3.87 in the office of the Chief Commissioner of Income-tax upto which date, he remained on the strength of the respondents. However, Shri R.G. Vijayan, respondent No.2 has since been selected as Senior Research Investigator on deputation basis initially for a period of one year in the National Commission on Self-employed Women in the Department of Women & Child Development Government of India w.e.f. 21.7.87. Consequently, one

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post of Statistical Investigator has fallen vacant for a period of one year. The respondents are contemplating that under the Recruitment Rules, the said vacancy being for ~~on~~ a short term ~~basis~~ be filled on transfer on deputation basis. However, the said vacancy has not been filled till date. Under the circumstances, we consider that it would be just and fair that the applicant be considered for promotion to the said post of Statistical Investigator provided he is willing to serve on a short term basis till Shri R.G. Vijayan, respondent No.2 reverts and rejoins the said post. Hence, we direct that the petitioner be called upon to ~~exefcise~~ exercise his option before the said vacancy is filled up by transfer on deputation basis and he be then considered for the said post as per the Recruitment Rules.

9. To sum up, therefore, while we dismiss this application as being without merit, we direct the respondents to consider the petitioner for appointment to the post of Statistical Investigator on short term basis in the light of our above observations.

3/3/88
(Birbal Nath)
Administrative Member

J.D. Jain
(J.D. Jain)
Vice-Chairman