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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1039 1986
T.A. No.

DATE OF DECISION 10.12.86

Shri Girish Sahai & Others XXXXXXXXXX Applicants
~~Petitioner~~

Shri R. R. Rai XXXXXXXXXX Applicants
Advocate for the ~~Petitioner(s)~~

Versus

Union of India Respondent

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? *Yes*

Kaushal Kumar
(Kaushal Kumar)
Member
10.12.1986

K. Madhava Reddy
(K. Madhava Reddy)
Chairman
10.12.1986

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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REGN. NO. OA 1039/86

Dated: 10.12.1986

Shri Girish Sahai & Others ---- Applicants

Vs.

Union of India --- Respondent

CORAM

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

For the Applicants ---- Shri R.R. Rai, counsel.

For the Respondent ---- None.

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

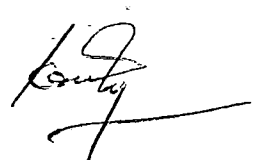
In this application, the validity of the amendment to the Department of Electronics (Group 'B' and Group 'C' posts) Recruitment Rules, 1977 made under Notification dated 26.6.1986 is challenged as violative of Fundamental Rights guaranteed under Articles 14 and 16 of the Constitution of India and also violative of the instructions contained in D.O. No.40(2)/71-DE, dated 26.3.1971 issued by the Cabinet Secretariat, New Delhi.

2. By the impugned amendment, Schedule to the Department of Electronics (Group 'B' and Group 'C' Posts) Recruitment Rules, 1977 has been amended, more especially by substituting the following entries for the existing entries in column 11:-

"(c) for the existing entry under column 11, the following entry shall be substituted, namely

(i) 25% by promotion;

(ii) 75% by appointment on the basis of results of limited departmental competitive examination conducted by the Department of Electronics from amongst the following

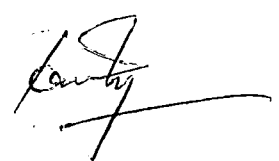


categories of persons, namely:-

- (1) Senior Personal Assistant with not less than 2 years' regular and continuous service in the grade;
- (2) Assistant and Stenographer Grade II with not less than 5 years' regular and continuous service in the grade;
- (3) Library Assistant, Caretaker, Technical Assistant Grade II, Administrative Assistant-cum-typist, Stenographer (in the scale of Rs.425-700) and Store Assistant with not less than 6 years' regular and continuous service in the grade. "

3. There is no doubt that by virtue of this amendment, persons who were not hitherto eligible for promotion to the post of Section Officer, have now become eligible and consequently the chances of those who alone were eligible for promotion earlier have been considerably reduced. That by itself, in our view, is not a ground to hold that the amended Rules are arbitrary. An employee has undoubtedly a right to be considered for promotion but only in accordance with the Recruitment Rules; he has no right to claim that the Rules which were in existence when he joined Government service should not be altered at all for all times to come in such a manner as to affect his chances of promotion.

4. The impugned Rules must themselves be shown to be arbitrary in order to be declared that they are violative of the Fundamental Rights guaranteed to an employee under Articles 14 and 16 of the Constitution. Merely because these Rules enlarge the zone of consideration and include within the category of eligible persons certain categories of persons not hitherto eligible, the persons who were eligible under the Rules and continue to be eligible even under the amended Rules cannot complain of arbitrariness. Their right to be considered for promotion is not affected by some more



persons hitherto ineligible being declared eligible. It is for the Rule making authority to decide which categories of persons should be declared eligible for consideration for promotion to the higher post. We are not convinced that any case is made out for holding the amendment to the Recruitment Rules to be arbitrary and violative of Articles 14 and 16 of the Constitution.

5. The next contention raised by the Applicants is that it violates the instructions contained in the above referred D.O. of the Cabinet Secretariat, New Delhi. Reliance for this contention is placed on para 8 of the said D.O. which reads as follows:-

" 8. The Department of Electronics has been exempted from the U.P.S.C., D.G.S.& D., C.P.W.D., and C.C.P. & S procedures and regulations for the relevant aspects. Further, in the area of personnel policies the present practice adopted by the Department of Atomic Energy with regard to the grant of extra increments and rationalisation of the dates of increments, merit promotions, foreign delegations and deputations and physical fitness for employment, will also apply to the Department of Electronics. In all other matters, except to the extent indicated in special rules and procedures that may be laid down by the Electronics Commission, the normal rules and orders of Government will apply. "

It is argued that as per these instructions in all matters of promotion in the Department of Electronics, the normal Rules and Orders of the Government will apply and that in no other Department, the categories of persons that are now declared eligible for being considered for promotion to the category of Section Officers in the Department of Electronics are eligible under the Rules governing these other Departments. The Department of Electronics is now singled out for a differential treatment and the normal Rules and Orders of the Government are rendered inapplicable as a result of the impugned amendment. But it would be seen

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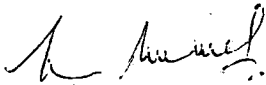
that even these instructions, on which reliance is placed, permit deviation from the general Rules and Orders of the Government to the extent indicated in the special Rules and procedures that may be laid down by the Electronics Commission. It is settled law that special Rules always override the general Rules. When for recruitment to the various posts in the Department of Electronics, special Rules have been framed, it is for the competent authority to make appropriate amendments from time to time having regard to the exigencies of service. If the Rule making authority has amended the special Rules, the general instructions contained in the D.O., which are of a non-statutory nature, cannot in any way affect the validity of the said Rules. As pointed out above, even those instructions recognise this fact and permit special Rules to be at variance with the general Orders and Rules which may be governing recruitment in other Departments.

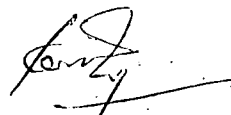
6. It is further complained that the representation of the Applicants in regard to the amendments brought about in these Rules under G.S.R. 369 of the Department of Electronics, dated 26th March, 1981 was not taken into account. From the communication dated 19.8.1985 addressed to the Applicants, it appears that the same was taken into account in issuing the impugned amendment to the Rules, for certain categories of employees who were declared eligible in 1981 were deleted and the method of direct recruitment was also amended. In fact by deletion of certain categories and by amendment of the method of direct recruitment, the applicants certainly stand to gain. It cannot, therefore, be said that the Rule making authority, in issuing the impugned amendment to the Rules did not take the representation of the

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Applicants into account. There is no law that the same set of Rules should govern all the Departments under the Government of India, irrespective of the nature of duties and functions to be performed by the various officers and other employees.

7. We do not find any merit in the application. It is accordingly dismissed.


(Kaushal Kumar)
Member
10.12.1986


(K. Madhava Reddy)
Chairman
10.12.1986