

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1092/86. 198
T.A. No.

DATE OF DECISION 23.10.87.

Shri A.D. Sati Petitioner

Shri R.L. Sethi Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri J.S. Bali Advocate for the Respondent(s)

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 ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all the Benches ?

23/10/87
(BIRBAL NATH)
Member (A)

(J.D. JAIN)
Vice-Chairman

6

DATE OF DECISION:

REGN. NO. O.A. 1092/86.

Shri A.D. Sati ... **Applicant**

Vs.

Union of India & Drs. ... Respondents.

CORAM:

Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant:

Shri R.L. Sethi, Advocate.

For the respondents:

Shri J.S. Bali, counsel.

J U D G M E N T

(delivered by Hon'ble Mr. Birbal Nath, A.M.)

This is Original Application No. 1092/86 filed in the Tribunal in December, 1986 under Section 19 of the Administrative Tribunals Act, 1985 wherein the applicant, Shri A.D. Sati, Instructor (Hindi Stenography), Institute of Commercial Practice, under the Delhi Administration has challenged the vires of the amended Recruitment Rules notified on 22.1.1986 and the impugned promotion order dated 31.10.1986 promoting respondents 4 to 6, i.e. S/Shri S.K. Khanna, H.R. Ahuja and R.R. Khurana to the post of Junior Lecturer in the same Institute.

2. We have gone through the documents placed before us and given careful thought to the arguments

7

advanced at the bar. The learned counsel for the applicant has challenged the amended Recruitment Rules on the ground that they are malafide, arbitrary and discriminatory and that the eligibility conditions of promotees have been made more stringent than those of direct recruits and they permit inter-discipline promotion in an irrational manner and militate against the welfare of the students.

So far as the promotion of respondents No. 4 to 6 is concerned, he has challenged the same on the ground that they have no skill for the post of Junior Lecturer (Hindi Stenography) because they were Instructors in a different discipline, i.e. English Stenography, and there was no inter-se seniority between the applicant and the respondents. So far as respondent No. 6, Shri R.R. Khurana, is concerned, he has been promoted vide the impugned order of 31st October, 1986 as Junior Lecturer (English Stenography). So, the argument that he was not qualified for the said post would require closer scrutiny.

3. So far as the vires of the amended Rules is concerned, we have examined the matter in detail in our judgment in O.A. No. 296/86 - M.S. Siddiqui Vs. Union of India & Ors. - In brief, it may be stated that there is an apparent anomaly in the amended Recruitment Rules inasmuch as the qualifications for direct recruits have been made lenient whereas, the qualifications for promotees appear to be stringent. However, this anomaly had been examined by the Services Department of the Delhi Administration when the amended Rules

were processed. The qualifications for the direct recruits were lowered on the ground that the vacancies remained unfilled and the quota for direct recruits was not being utilised. So far as the promotees are concerned, it was stated that all the incumbents in the feeder cadre had the requisite qualifications. It is also to be noted that the amended Rules have not militated against the applicant so far as his educational qualifications are concerned as he is a Post-Graduate in Economics and was, accordingly, eligible for consideration from the 50 per cent quota meant for promotees. The amended qualifications, therefore, did not affect him adversely so far as the prescription of more stringent qualifications for promotees was concerned. As such, we need not state anything further so far as the challenge made by the applicant against the amended Rules is concerned. So far as the amended Rules are concerned, we have struck the same in the case of M.S. Siddiqui Vs. Union of India & Ors. (O.A. No. 296/86) on the ground that once direct recruitment with qualification of Graduation is permitted in the feeder cadre of Instructor, prescription of a more stringent qualification for promotion purposes would amount to debarring Graduate direct entrants to promotion to the post of Junior Lecturer by prescribing the qualification of M.A./M.Com. etc. and the amended Rules will thus be discriminatory and constitute an infraction of Article 16 of the Constitution.

4. Now, we come to the question of promotion of the applicant. The promotions were considered by the Departmental Promotion Committee which met on 17.10.1986 and that Commission selected the following respondents (4 to 6) for the post of Junior Lecturer:-

1. Shri S.K. Khanna

on regular basis as Junior Lecturer, S.P. Hindi

2. Shri H.R. Ahuja

on regular basis as Junior Lecturer, S.P. Hindi

3. Shri R.R. Khurana

on purely temporary and ad-hoc basis as Junior Lecturer, S.P. English."

From the papers made available to us, it is clear that the Committee had considered the cases of S/Shri M.S. Siddiqui and the applicant too. So far as Mr. Siddiqui was concerned, consideration of his case was deferred in view of the orders passed by the Tribunal on 12.5.1986. One post of Junior Lecturer Secretarial Practice (English) was left vacant by the D.P.C. The applicant has a right to be considered but the question of selection has to be left to the D.P.C. convened under appropriate Rules. It is not for the Tribunal to instal itself as D.P.C. into the proceedings. The Tribunal can certainly look if the D.P.C. has acted in violation of the Rules/Regulations framed with regard to the consideration of the candidates. No such case has been set up or made out by the applicant. It has been averred by the respondents in para. 7.6 of the counter that the applicant was eligible for promotion in terms of the Recruitment Rules but being junior, his candidature was not approved by the D.P.C. It was further averred that there is inter-se seniority of the Instructors at the Institute of Commercial Practice and promotions have to be made according to seniority list. However, it has been argued that Shri H.R. Ahuja, respondent No. 6, has been promoted against the post of Junior Lecturer (Hindi Stenography) though he has no such experience, whereas the applicant having been a teacher in Hindi Stenography should have been considered for the Hindi post. The qualifications of the candidates selected by the

D.P.C. are given below:-

<u>"S.No. Name</u>	<u>Qualification possessed.</u>
1. Shri S.K. Khanna	i) M.A. (Eco.) II ii) Cert. passing Hindi shorthand from Dte. of Edn. (Ministry of Home Affairs).
2. Shri H.R. Ahuja	i) M.Com. II ii) III Certificate in Stenography iii) Cert. in Hindi shorthand from Board of Sec. Edn.
3. Shri R.R. Khurana	M.A. (Eco.) III".

It is the case of the respondents that there is only one seniority list of Instructors at the I.C.P. which covers all the Instructors and the officials promoted had the requisite minimum qualifications to man the job. (reply to para.6.4) . The applicant could not be promoted being junior to the three respondents who were promoted and the promotions were ordered after taking into consideration the seniority of the respondents, their A.C.Rs, work and conduct and suitability by a duly constituted D.P.C. However, the applicant's case is that promotion to a discipline should depend upon the experience in that discipline, i.e. the post of Junior Lecturer in Hindi should be given only to him because he had the experience. This argument of the applicant is based on the provisions in the unamended Recruitment Rules of 1978, column 11 whereof reads as under:-

"Column 11
Instructors with 3 years standing in the
appropriate subject".

It is also the case of the applicant that two posts of Junior Lecturer in Secretarial Practice (Hindi Stenography) had occurred in 1984 itself when the Recruitment Rules of 1986 had not come in force. The promotion against

the vacancies as existing in 1984 will have to be governed

by the Recruitment Rules in force on that date and not by

subsequently amended Rules which were not in force at that time. This position also emerges from the judgment of S.C. in Y.V. Rangiah & Ors V J.S. Rao & Ors¹. We have to examine if the amendment of The

Recruitment Rules effected in 1986 only affects the chances of promotion of the applicant or takes away his right.

The Hon'ble Supreme Court in the case of Ramchandra Shankar Deodhar and others v. the State of Maharashtra and others¹

has held that the reduction in mere chance of promotion cannot be regarded as varying a condition of service and does not militate against the constitutional rights given to a civil servant. But where a definite right accrues to a civil servant, it cannot be taken away by a retrospective amendment. On examining the amendment effected in 1986 in the light of the aforesaid judgment, it will be seen that the amended Recruitment Rules of 1986 take away the right of the applicant for consideration for promotion vested in him under the Rules of 1978, quoted above.

It has been averred in the application that two vacancies were available in 1984 and at that time, the Recruitment Rules were not amended and the applicant, therefore, had a right to be considered against one of those vacancies at that time. The factum of the two posts of Junior Lecturer in Secretarial Practice (Hindi Stenography) Scale 650-960 Group 'C' non-gazetted, non-Ministerial, being available in 1984, is stated in para. 6.11 of the applicant and stands admitted in the counter filed by the respondents.

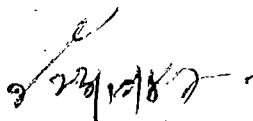
1. AIR 1974 SC 259

2. 1983(3) SCC 284.

Since the vacancies were available in 1984, the applicant has a right to be considered under the Rules in force in the year 1984. This right cannot be taken away by the subsequent amendment made in 1986.

6. In view of the matter as stated above, the application is allowed to the extent that respondents 1 to 4 will consider the case of the applicant for one of the vacancies available in 1984 under the Recruitment Rules of 1978 as in force in 1984.

His case will be considered within three months from the date of receipt of this order. However, there will be no order as to costs.


(BIRBAL NATH)
Member (A)


(J.D. JAIN)
Vice-Chairman