

16-A

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. D.A.1455/87.

DATE OF DECISION: 9.2.1993

Shri Bhagwan Singh.

.. Petitioner.

Versus

Union of India & anr.

.. Respondents.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the Petitioner.

.. Shri B.S. Charya,
Counsel.

For the Respondents.

.. Shri A.K. Behra, proxy
for Shri P.H. Ram-
chandani, Sr. Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The petitioner, Shri Bhagwan Singh, started his career in the year 1976 in the Small Industries Service Institute as Small Industry Promotion Officer. Respondent No.2, the Central Social Welfare Board, New Delhi, invited applications in the year 1980 for filling up the posts of Assistant Director Grade-I (Marketing) in the scale of Rs.700-1300. The petitioner offered himself as a candidate for such a post. He was duly selected and offered appointment as per Annexure P-1 dated 10.10.1980. The petitioner gave a reply on 23.10.1980 wherein he conveyed that the privileges which he was enjoying in the Small Industries Service Institute should be protected. The condition imposed by the petitioner for accepting the post was not acceptable to Respondent No.2. Respondent No. 2 offered to take the petitioner on deputation basis as obviously they felt that his experience would

be advantageous. The petitioner agreed to come on deputation whereupon he was relieved on 30.3.1981 from the Small Industries Service Institute and he joined as a deputationist with Respondent No.2 as an Assistant Director Grade-I on 31.3.1981. Though the petitioner initially came to Respondent No. 2 as a deputationist, the petitioner having agreed for permanent absorption in the service of Respondent No.2, he was permanently appointed w.e.f. 1.4.1983 as Assistant Director Grade-I vide order dated 26.2.1986.

2. The next promotional cadre for Assistant Directors Grade-I is the cadre of Deputy Directors. It is necessary to state at this stage that before the revision of pay-scales, the cadre of Assistant Directors Grade-I carried the pay scale of Rs.700-1300 and the cadre of Deputy Directors carried the pay scale of Rs.1100-1600. The recruitment rules regulating appointment to the post of Deputy Directors were amended with the approval of the Government of India ~~given~~ on 16.9.1985. Clause (i) of paragraph 11 of the Rules was substituted by the following clause:

"by promotion from amongst Asstt. Director Grade I/PRO/Project Officer having a minimum of 5 years regular service in the grade of Rs.700-1300/Rs.650-1200 or both, 50% of the posts being filled up from amongst Asstt. Director Grade.I/PRO/Project Officer VAB and 50% from amongst Field Project Officers on 1:1 basis".

If the petitioner is regarded as having commenced regular service as an Assistant Director Grade-I with effect from the date of his permanent absorption on 1.4.1983, he would earn

18

eligibility in accordance with rules for promotion to the cadre of Deputy Directors after completion of 5 years i.e. from 1.4.1988. The petitioner has in this application filed under Section 19 of the Administrative Tribunals Act, 1985 prayed for a direction to quash the promotions made in April, 1986 to the post of Deputy Directors, strike down clause 11 of the Recruitment rules for the post of Deputy Director as violating Article 14 of the Constitution and for a direction to the Respondents 1 and 2 to consider the petitioner as eligible for promotion to the post of Deputy Director in April, 1986 and to give him promotion from the date his immediate juniors were promoted with all attendant consequential benefits and further promotion to the higher post. Some ad hoc promotions were made sometime in the year 1986 to the cadre of Deputy Directors. Respondents 5 and 7, according to the petitioner, are his juniors in the cadre of Assistant Directors Grade-I, who were not only promoted on ad hoc basis, but they were also regularly promoted to the cadre of Deputy Directors sometime in the year 1987.

4. The petitioner's case is that though he was eligible for promotion to the cadre of Deputy Directors, his case was not considered on ^{an} erroneous assumption. He submitted that it is wrong to say that the petitioner was in regular service only w.e.f. 1.4.1983. The petitioner maintains that he having joined the service of Respondent No. 2 as Assistant Director Grade-I

w.e.f. 31.3.1981 and his services having been regularised by the later order made in the year 1987, the entire service rendered by him from 31.3.1981 in the cadre of Assistant Directors should be regarded as regular service for the purpose of eligibility of promotion to the post of Deputy Director. It is necessary to point out that though the petitioner was offered appointment as Assistant Director Grade-I in pursuance of his selection for the said post, he declined to accept that offer. Instead he agreed to join not as a direct recruit but as a deputationist. As the petitioner came on deputation to Respondent No. 2 on 31.3.1981, he was liable for reversion to the parent office on the expiry of the period of deputation. If the petitioner's services were not permanently absorbed with Respondent No.2, it is obvious that the service rendered by the petitioner as deputationist could not be regarded as regular service for the purpose of recruitment rules. The permanent absorption of the petitioner took place w.e.f. 1.4.1983 on the strength of an order made in this behalf on 26.2.1986. The clear effect of the order dated the 26th February, 1986 is that the petitioner stood inducted to the regular service of Respondent No.2 w.e.f. 1.4.1983. The service rendered by the petitioner w.e.f. 31.3.1981 to 31.3.1983 was, therefore, rightly treated as service rendered only as a deputationist. The

service rendered by the petitioner as a deputationist cannot, for the purpose of recruitment rules, be regarded as regular service. We have, therefore, no hesitation in holding that the regular service of the petitioner with Respondent No. 2 commenced only from 1.4.1983 and not from any anterior date. Hence, it is obvious that he could not earn eligibility for promotion to the cadre of Deputy Directors until he put in 5 years of service in the cadre of Assistant Directors Grade-I. On the date on which the petitioner filed this application on 12.10.1987, he had not completed 5 years of service. It is, therefore, clear that the petitioner was not entitled to promotion as on the date on which the petition was filed before this Tribunal. Hence, the question of directing the Respondents 1 and 2 to consider his case for promotion with effect from any date earlier than his date of eligibility would not arise.

5. It was next contended by Shri Charya, learned counsel for the petitioner, that Clause 11(i) which was substituted by amendment in the year 1985 in the Recruitment rules for the post of Deputy Director is liable to be struck down as offending Article 14 of the Constitution. It is clear from the impugned provision that the feeder category consists of Assistant Directors Grade-I/PROs/Project Officers. The posts of Deputy Director are required to be filled up by promotion

21

by selection. One of the eligibility qualifications prescribed by the impugned rules is that the candidate should have minimum of 5 years regular service in the grade of Rs.700-1300 or in the grade of Rs.650-1200 or both. The principal attack of Shri Charya is to this part of the rule which prescribes the minimum of 5 years regular service in one or the other or both the grades. Our attention was drawn to the Recruitment rules to the cadre of Assistant Directors Grade-I which provide that 75% of the posts should be filled up by promotion from the lower cadre carrying the scale of Rs.650-1200 and that 25% of the posts of Assistant Director Grade-I should be filled up by direct recruitment. The requirement of the impugned rule undoubtedly is that the persons in the feeder category should have the minimum of 5 years of regular service. Those in the feeder cadre of Assistant Directors Grade-I/PROs/Project Officers are all in the scale of Rs.700-1300. Those in the scale of Rs.650-1200 are not in the feeder cadre for the post of Deputy Directors. If the service rendered in the posts carries the scale of Rs.650-1200, that can count for the minimum of 5 years of regular service prescribed by the impugned rule. The prescription of 5 years service in the feeder cadre which carries the pay scale of Rs.700-1300 is perfectly justified and it is not open to challenge. The challenge is to count the service rendered in the cadre below the feeder cadre which carries the lower scale of Rs.650-1200. As the service

rendered in the cadre below the feeder cadre in the scale of Rs.650-1200 also counts for the minimum of 5 years of regular service prescribed by the impugned rule, it was contended that it has the effect of treating unequals as equals and thereby offending Article 14 of the Constitution. It was maintained that the service rendered by the petitioner carrying the pay scale of Rs.700-1300 cannot be treated on par with the service rendered by a person in the lower cadre carrying the pay scale of Rs.650-1200. A person directly recruited as Assistant Director Grade-I and is senior to a person who has become an Assistant Director Grade I by promotion may have to yield place to his junior in the matter of promotion to the post of Deputy Director. This can be very well explained by an illustration. If 'A' who has been directly recruited as Assistant Director Grade-I and has on the relevant date only 2 years regular service in the cadre he would not be eligible for promotion to the post of Deputy Director. 'B' who is junior to him in the cadre of Assistant Directors Grade-I who has come by promotion and has put in only 1 year of service in that cadre may become eligible for promotion if he had before promotion to the post of Assistant Director Grade-I put in service of 4 years or more in the post carrying the scale of Rs.650-1200. Thus, this would lead to the situation of 'B' a junior in the cadre of Assistant Directors Grade-I becoming eligible for consideration to the selection

23

to the post of Deputy Director whereas 'A' who is senior who has come by direct recruitment to the cadre would not have earned that eligibility. This may result in 'B' the Junior of 'A' becoming his superior by promotion to the cadre of Deputy Directors. This does not happen because 'B' has a better merit than 'A'. 'A's case would not be considered for promotion whereas his junior 'B' would be considered for promotion. The senior is discriminated against without any valid justification. The discrimination flows from the statutory provision prescribing a particular mode for counting the minimum of 5 years regular service as the eligibility criteria. The impugned rule prescribes that the inferior service in the scale of Rs.650-1200 shall be treated on par with the superior service rendered in the scale of Rs.700-1300. The impugned rule which brings about such a discrimination, is, therefore, liable to be struck down as violating Art.14. In our opinion, the portion of the rule that brings about such a discrimination being severable, the entire impugned rule need not be declared as void. It is reasonable to infer that the rule making authority would have made the rule without the portion reading 'Rs.650-1200 or both' if it had realised that this part of the rule offends Article 14 of the Constitution. Hence, we consider it just and proper to strike down only that portion of the impugned rules which reads:

"Rs.650-1200 or both"

The impugned Clause 11(i) after striking down the offending portion would read as follows:

"(i) by promotion from amongst Asstt. Director Grade-I/PRO/Project Officer having a minimum of 5 years regular services in the grade of Rs.700-1300, 50% of the posts being filled up from amongst Asstt. Director Grade I/PRO, Project Officer VAB and 50% from amongst Field Project Officers on 1:1 basis".

6. For the reasons stated above, this petition is partly allowed as follows:

- (a) The portion reading 'Rs.650-1200 or both' occurring in Clause 11(i) of the Recruitment rules for the post of Deputy Directors as amended with the approval of the Government of India on 16.7.1985 is struck down as violating Article 14 of the Constitution;
- (b) The promotions made to the cadre of Deputy Directors on the strength of the impugned rule so far shall remain undisturbed; and
- (c) The Respondents 1 and 2 shall consider the case of the petitioner for promotion to the cadre of Deputy Directors after his earning eligibility for promotion to the said cadre in the light of the elucidation made in the course of this judgement as and when his turn for such promotion arises;
- (d) No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER(A)

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN