CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI.

O.A. 1746/87.   DATE OF DECISION: 22.4.1993.

          Neelam Sharma.   ... Petitioner.

                         Versus

          Union of India
          through
          Secretary,
          Administration and
          General, Planning Commission,
          New Delhi.   ... Respondent.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER(A).

     For the Petitioner.   ... Shri S.M. Garg,
                                      Counsel.

     For the Respondent.   ... Shri P.P. Khurana,
                                      Counsel.

                    JUDGEMENT (ORAL)

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

          This petition is by Smt. Neelam Sharma in which
she has challenged the validity of the proviso to Column. 11
of the schedule to the Planning Commission, Programme
Evaluation Organisation (Computer Unit) (Non-Secretariat
Posts) Recruitment Rules, 1979 pertaining to the post of
Programmer in so far as it fixes the date as 14.8.1972 and
for other consequential benefits. The petitioner joined
service in the Computer Service Division of the Programme
Evaluation Organisation in the Planning Commission as Machine
Operator on 1.7.1965. In due course, she was promoted as
Machine Operator Grade-I on 16.8.1971. She was further
promoted as Console Operator on 14.4.1977. We are concerned
in this case with the statutory provisions governing promotion
to the cadre of Programmer for which the feeder cadre is the

Console Operator. The statutory rules of the department in
the year 1966 prescribed for Console Operator the qualification
of a degree with Statistics, Mathematics, Science or Economics
of a recognised university. For the post of Programmer, the
1966 rules prescribed that Console Operator with three years'
service is eligible. The petitioner is a Graduate in economics
from a recognised university. It is, therefore, clear that
under the 1966 rules she had the eligibility for appointment as
Console Operator. The petitioner was not promoted as Console
Operator when the 1966 rules were in force. The 1966 rules
were replaced by the 1972 rules which were notified under
Notification dated 14.8.1972 made under the proviso to Article
309 of the Constitution. The 1972 rules did not bring about
any substantial change so far as the qualification for Console
Operator and Programmer is concerned. The rules were further
amended under the proviso to Article 309 by the Notification
dated 29.1.1979. By the said amendment substantial changes
were brought about in regard to the qualifications for the
post of Programmer. The new prescription is that the promotion
can be made from the cadre of Console Operators/Senior Super-
visors who possessed a degree with Statistics or Mathematics
or Operations Research or Computer Science with five years'
service in the grade rendered after appointment thereto on a
regular basis. To this is added a proviso which
reads as follows:

> "Provided that the above mentioned educational
> qualifications will not be insisted upon in
> respect of Console Operators/Senior Supervisors
> who were in position on 14.8.1972 i.e. prior to
> the promulgation of these rules".

The principal grievance of the petitioner is that exempting
Console Operators that were in position on 14.8.1972 is
discriminatory and violative of Article 14 of the Constitution.

2.   The contention of the learned counsel for the petitioner is that the higher qualifications having been prescribed for eligibility for promotion to the cadre of Programmers, for the first time by the 1979 rules the intention of rule making authority when it engrafted the proviso/to alleviate the
was
hardship caused by the prescription of the higher qualifications for promotion to the post of Programmer. That being the objective of the proviso, it is contended that all those who were in position on the date of the amendment in the year 1979 should have been exempted from the new prescription of educational qualifications for the post of Programmer and that restricting the relief to those who were in position on 14.8.1972 is discriminatory and violative of Article 14 of the Constitution We shall, therefore, examine if the charge of discrimination is sustainable.
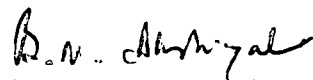
3.   The very language of the proviso makes it clear that it is intended for the benefit of those who were in position as Console Operators/Senior Supervisors on 14.8.1972. In other word the requirement of higher qualification for the post of Programmer is taken away in respect of those who were in position in the feeder cadre on 14.8.1972. The date fixed under the proviso is the date on which the new rules came into force in the year 1972. It is necessary to point out that the 1979 rules are the amendment rules which have brought about the amendment to the 1972 rules. The qualifications for the post of Programmer prescribed by the 1979 rules were substituted for those prescribed by the 1972 rules. Thus, the effect of the prescription by the amendment in the year 1979 is to prescribe the higher qualifications with effect from the date on which the 1972 rules came into force. That is the clear effect of the substitution that was brought about by the 1979 rules. It
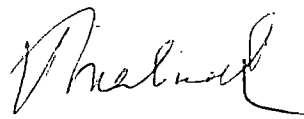
is having regard to this situation a proviso was engrafted saying that the educational qualifications prescribed by the 1979 rules shall not be insisted upon in respect of promotion of Console Operators and Senior Supervisors who were in position on 14.8.1972. As the amendment made in the year 1979 had effect from 14.8.1972, the rule making authority obviously felt that relief should be given to those who were in position as Console Operators/Senior Supervisors on 14.8.1972, the date on which the new prescription came into force. The obvious reason is that the Console Operators/Senior Supervisors/were in position on 14.8.1972 had just expectation that they would earn promotion to the cadre of Programmer on the basis of the qualifications they possessed which just expectation stood affected by the prescription of higher qualifications by the amendment of 1979 rules. The rule making authority, therefore, thought it proper to respect/just expectation of those who were in position on 14.8.1972 and to grant them relief to that extent. That is the reason the date 14.8.1972 has been chosen for the purpose of exempting the prescription of higher qualifications introduced by the 1979 rules in respect of those who were already in position on the relevant date i.e. 14.8.1972. This, in our opinion, cannot be regarded as choosing an irrelevant date which has no nexus/sought to be achieved. It is, therefore, not possible to accede to the contention of the learned counsel for the petitioner that the date 14.8.1972 is arbitrary and, therefore, liable to be struck down as offending Article 14 of the Constitution.

4.   There is another reason why relief as claimed by the petitioner is not possible to be granted in this case. If, as contended by the petitioner, the date 14.8.1972 is arbitrary, the entire provision will have to be struck down as offending Article 14 of the Constitution as the date by itself is not

severable from the provision. It is a well recognised principle that if the offending portion of the statutory provision is not severable, the entire provision has to be struck down. If the entire provision is struck down, it would not bring any advantage so far as the petitioner is concerned. We say so because the petitioner does not possess the main educational qualification prescribed for the post of Programmer. The main qualification, as already stated, is a degree with Statistics or Mathematics or Operations Research or Computer Science. The petitioner does not possess any one of these qualifications. Hence, the petitioner will not get any relief. It is an academic exercise so far as the petitioner's case is concerned. This is another ground for declining relief to the petitioner.

5. For the reasons stated above, this petition fails and is accordingly dismissed. No costs.

(B.N. DHOUNDIYAL)
MEMBER(A)

(V.S. MALIMATH)
CHAIRMAN

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