

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 320 of 1987 198
T.A. No.

DATE OF DECISION 27.4.88

Shri S.S. Randhawa and others

Petitioner

Mr. B.S. Maine

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Mr. R.K. Kamal and

Advocate for the Respondent(s)

Mr. G.D. Gupta, Advocates

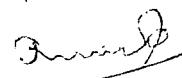
CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE-CHAIRMAN(J)

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER


(P.K. KARTHA)
VICE-CHAIRMAN(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Regn. No. OA 320/87

DATE OF DECISION: 27.4.88

Shri S.S. Randhawa and others ...Petitioners.

Versus

Union of India and others ...Respondents

For Petitioners: Shri B.S. Mainee, Advocate

For Respondents: Mr. R.K. Kamal and Mr. Jagjit Singh
for respondent No. 1.

Mr. G.D. Gupta, Advocate for the interveners/
Respondents.

CORAM: HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN(J)

HON'BLE MR. S.P. MUKERJI, ADMINISTRATIVE MEMBER

JUDGMENT:

(Judgment of the Bench delivered by
Mr. S.P. Mukerji, Administrative Member)

The four applicants, who have been working as Superintendent/Chief Controller/Area Officer at New Delhi, Ferozepure and Hanuman Garh in the non-gazetted Group 'B' post in the scale of Rs. 840-1200 (revised Rs. 2375-3500) have challenged the supplementary selection for promotion to Group 'B' Gazetted post in the Transportation (Traffic) and Commercial Department held in March, 1987 against the 75% vacancies of 1978-79. The main grounds taken by them are, firstly, that 15 days' notice for the selection test had not been given by the respondents, and, secondly, since they are holding posts in the ^{revised} scale of Rs. 2375-3500 they cannot be subjected to selection test for Group 'B' Gazetted posts in the revised pay-scale of Rs. 2000-3500. It may be remembered that this supplementary examination was conducted on the basis of the judgment delivered by

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this Tribunal in T.A.No.431/85 on 9.10.86. This judgment directed the respondents to hold a supplementary examination to supplement the test and interview which had been held in December, 1978 and February, 1979 so that ^{these} who became eligible ^{to take the test} by revised seniority as a result of that judgment, but could not take the test in 1978/1979, are not deprived of their chance of promotion against the 1978-79 vacancies. By another order dated 6.2.87 by court No.1 of the Principal Bench of this Tribunal, the respondents were warned that if they do not implement their order dated 25.6.86 on or before 15.3.87, the petitioners, in that case, will be deemed to have been promoted with effect from the date they had passed the examination, but their seniority will be subject to the result of the supplementary examination directed by this Tribunal. It is because of these directions that the respondents had to issue notice of the supplementary selection on 28.2.87 to be held on 8th March (written) and 10th and 11th March, 1987 (interview).

2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the first contention of the applicants that 15 days' notice was necessary is concerned, the applicants have brought to our notice Circular No.831-E/63/2-VI dated 7.12.1962, the relevant portion of which reads as follows:-

" It has, therefore, been decided that wherever the staff are called to appear for written test or an interview to fill selection posts, at least a fortnight's notice should be given to them. These orders would equally apply for holding written tests where prescribed for filling non-selection posts.

 These instructions should be carefully noted and acted upon."

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The General Manager's Circular No.831-E/63/2-VI(EIV) dated 4/11/63 was also cited, the relevant portion of which is quoted below:

"A date should be fixed for holding the selection as soon as the list of eligible staff is made available to the Selection Board. As a normal rule, minimum three weeks notice should be given to the staff. 15 days notice should be resorted to where it is not possible for the administration for any specific reason to give a longer period of notice."

It is true that in these circulars and even otherwise the 15 days' notice was necessary. However, the question which falls for decision in this case is whether the shortfall in the notice is fatal to the selection or not. It may be remembered that the notice of selection was issued on 28.2.87 while the written test was to commence on 8th March, 1987. The notice period fell short of 15 days by 7 days. The learned counsel for the respondents has argued that the notice period could not be more because of the requirement to meet the deadline given by Court No.1 of this Tribunal and that there was no malafide intention to deprive the candidates of the legitimate notice. It is obvious that the notice period of 15 days is not a statutory requirement.

The learned counsel for the applicants contended during his arguments that even administrative orders and circulars confer justiciable right and for this purpose he relied on the decision of the Calcutta High Court in M.R.Nafdey V. Union of India, 1975(2) SLR 110 at 115. The Calcutta High Court had relied upon the decision of the Supreme Court in Sant Ram Sharma Vs. The State of Rajasthan, AIR 1967 SC 1910 in which it had been observed that the Government can frame administrative rules to

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supplement the rules framed under Article 309 of the Constitution and that such administrative rules so long as they are not inconsistent with the rules framed under Article 309 would govern the conditions for service. Reference was also made to the decision of the Supreme Court in Union of India Vs. K.P. Joseph, AIR 1973 SC 330. In that case, a civil servant sought to enforce certain rights conferred by an administrative order incorporated in an office memorandum. The Union of India took the plea that the order being an administrative direction, confers no justiciable right upon the civil servants. Over-ruling this plea, it was observed that "to say that the administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights that we have imported, the principles of natural justice of audi alteram partem into this area".

3. To our mind, the authorities cited by the learned counsel for the petitioner are clearly distinguishable. There are authoritative pronouncements of the Supreme Court to the effect that executive orders or administrative instructions do not have the force of statutory rules and that ~~where~~ their violation is not justiciable in a court of law. In G.J. Genandez v. State of Mysore, AIR 1967 SC 1753, it was observed that in order that such executive instructions have the force of statutory rules, it must be shown that they have been issued either under the authority conferred on the Government by some statute or under some provision

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of the Constitution providing therefor. Breach of such executive instructions do not confer any right on any member of the public to ask for a writ against the Government by a petition under Article 226. In K.P. Joseph's case which has been relied upon by the petitioner, the Supreme Court has clarified in para 11 of its judgment that they were not laying down any general proposition on this question. In the subsequent decision of the Supreme Court in State of Assam Vs. Basanta Kumar Das, 1973(1) SCC 461 at 463 and 466, the Supreme Court has reiterated the principle that a mere executive instruction would not confer any legal right on the persons covered by it. In that case, the Government of Assam had issued a memorandum raising the age of retirement of its servants from 55 to 58 years. Referring to this memorandum, the Supreme Court observed that it was "a mere executive instruction and not a rule made under Article 309 of the Constitution. It did not confer any legal right on the persons covered by it. No legal action can be founded on it".

4. There are observations to similar effect in Manohar Lal Madan Vs. State of Punjab, 1973 SLJ 557 at 576.

5. We are, therefore, of the opinion that no legal right which is justiciable in a Court or Tribunal accrues to the petitioner by virtue of the administrative orders and circulars relied upon by them in this case.

6. ^{47 days in the month period} The shortfall, therefore, cannot be fatal

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to the validity of the selection made. Further, since the short-fall was equal for all candidates, it cannot be held to be discriminatory in nature. The four applicants were working at fairly senior posts in New Delhi which is the Railway Headquarter, Ferozepur which is a Divisional Headquarter and Hanuman Garh, which is an Area Headquarter. It cannot be held that they were working at so interior and inaccessible places that they were more disadvantaged than others. It is admitted that out of 103 candidates, who were notified to appear in the examination, 47 appeared. Of the remaining 56 candidates who did not appear, only 4 applicants before us and perhaps a few more, have so far approached the Tribunal. If the short-fall in the notice period had been devastating to the candidates, the number of applicants before the Tribunal would have been far larger.

7. As regards the second contention of the applicants that since they are holding the posts in a higher pay-scale they should not be required to appear in the selection test for Group-B Gazetted post, the rationale does not impress us. Firstly, holders of Class-II Non-gazetted posts cannot be held to be superior to the holders of Group 'B' Gazetted posts. Further, non-gazetted pay-scale of Rs.2375-3500 cannot be held to be superior or even equivalent to the Gazetted scale of Rs.2000-3500. Comparison of pay scales 'per se' is made not on the basis of the minimum of the pay-scale but by the maximum. The maximum of the two scales being the same, Group 'B' Non-Gazetted post cannot be held equivalent or superior to Group 'B' Gazetted scale of Rs.200-3500. The Department of Personnel in classifying posts in Groups 'A', 'B', 'C' and 'D' have gone by the

maximum of the pay-scale and not the minimum. A historical comparison of the pay-scale of Chief Controller held by the applicants with the Junior Scale Group 'B' post is given below:-

Category	Pre 1931	I Pay Commission	II Pay Commission	III Pay Commission	IV Pay Commission
Chief Controller	425-500	360-500	450-575	840-1040 840-1200	2375-3500
Junior Scale Class II	300-900	350-850	400-950	650-1200	2000-3500

The above ^{table} detail will show that the maximum of the Junior scale Group 'B' has always been higher than the pay-scale of Chief Controller till 1.1.73 whereafter the maximum of these categories were the same.

3. There is a fallacy in the applicants' claim which is on the basis of the pay-scale of the post held by them now. It is admitted that they started holding the post in the pay-scale of Rs.840-1200 (revised Rs.2375-3500) w.e.f. 1.1.84 (petitioners 1 to 3) and 18.6.86 (petitioner No.4). These pay-scales, therefore, will be ~~of~~ no relevance at all to adjudge their status for the examination which is a supplementary to the examination held in 1978-79 when they were holding posts with much lower status and pay-scales.

4. In the facts and circumstances, we see no merit in the application and reject the same. There will be no order as to costs.

S. P. Mukerji
27.4.85
(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

Partha
27/4/85
(P.K. KARTHA)
VICE-CHAIRMAN(J)