

In the Central Administrative Tribunal  
Principal Bench: New Delhi

OA No.430/87

Date of decision: 11.11.1992.

Shri H.L. Jussal ,

...Petitioner

Versus

Union of India through the  
Secretary, Department of Science  
and Technology, Technology  
Bhavan, New Delhi & Others

...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman  
The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner Shri M.R. Bhardwaj, Counsel.

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

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

The petitioner, Shri H.L. Jussal, joined service as Junior Analyst and his services in that cadre were regularised, according to him, with effect from 23.01.1982. On the date on which the petitioner became a Junior Analyst what held the field were the Department of Science and Technology (Junior Analysts and Technical Assistants Group 'B') Recruitment Rules, 1982 published under the notification dated 23.12.1982. The pay scale attached to the said post was Rs.650-1200. The next promotional cadre available for Junior Analysts was that of Senior Scientific Officer (SSO for short) Grade-II. That post could be filled up by promotion of Junior Analysts with three years'

regular service in the grade. The scale of the pay of the SSO Grade-II was naturally higher than that of the Junior Analyst. It was at that time Rs.700-1300. The next promotional post available for the SSO Grade-II was the post of SSO Grade-I in the scale of Rs.1100-1600. The SSO Grade-II with five years' regular service was qualified for promotion. When such was the scheme regulating recruitment to the cadre of Junior Analysts, promotions to the cadre of SSO Grade-II and further promotions to the cadre of SSO Grade-I, the scheme stood modified by fresh rules framed. The new rules were promulgated by the President under proviso to Article 309 of the Constitution under notification dated 3.7.1984 entitled "Department of Science and Technology Group 'A' Gazetted posts (Non-Ministerial, Scientific and Technical) Rules, 1984. Sub-rule 2 of Rule-1 says that these rules shall come into force on the date of their publication in the official gazette. Under the 1984 rules, provision is made under rule-3 for initial constitution and under rule<sup>4</sup>/for future maintenance. Rule-3 reads as follows:-

✓ "(1) All Group-'A' officers working in the Department of Science and Technology on the date of commencement of these rules shall be deemed to have been appointed

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to the posts corresponding to those which they were holding on regular basis on that date at the initial constitution.

(2) The Suitability of the Junior Analysts working in the Department of Science and Technology on regular basis on the date of commencement of these rules shall be determined by a Selection Committee to be constituted by the Union Public Service Commission with the Chairman or Member of the Union Public Service Commission as President and not more than two representatives of appropriate status to be nominated by the Department of Science and Technology for their appointment to the grade of Senior Scientific Officer Grade-I. the Selection Committee shall prepare a list of officers considered suitable for such appointment and submit the same to the Union Public Service Commission. On receipt of the said list, the Commission shall forward its recommendations for appointment of the officers found suitable to the grade of Senior Scientific Officer Grade-I to the Department of Science and Technology.

(3) Such of the Junior Analysts as are not found suitable under sub rule (2) above their cases will be reviewed by

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the Selection Committee every year for appointments as Senior Scientific Officer Grade-I at the maintenance stage."

Sub rule 2 of Rule 3 provides that Junior Analysts working in the Department of Science and Technology on regular basis on the date of the coming into force of the rules shall be determined by a Selection Committee to be constituted by the UPSC.

Those who are found fit and suitable are required to be inducted at the initial constitution as SSO Grade-I. Such of the Junior Analysts as are not found suitable their cases are required to be reviewed by Selection Committee every year for appointment as SSO Grade-I at the maintenance stage. The maintenance stage recruitment is provided by rule-4. The clear effect of Rule-3<sup>is</sup> that such of those who stand absorbed as Junior Analysts become SSO Grade-I as a part of the initial constitution. The other Junior Analysts who are not found suitable have to take their chance for getting into the appropriate cadre in accordance with Rule-4 which provides for future maintenance. Rule-3 was amended by notification dated 9.9.1985. Sub rules 2 and 3 of rule 3 substituted by the

1985 amended rules read as follows:-

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"(2) The Suitability of Junior Analysts, working in the Department of Science & Technology on regular basis with at least years service in the grade on the date of commencement of these rules, shall be determined by a Selection Committee to be constituted by the Union Public Service Commission with the Chairman or Member of the Union Public Service representatives of appropriate status to be nominated by the Department of Science and Technology for their appointment to the Grade of Senior Scientific Officer, Grade-I. The Selection Committee shall prepare a list of officers considered suitable for such appointment and submit the same to the Union Public Service Commission. On receipt of the said list, the Commission shall forward its recommendations for appointment of the officers found suitable to the grade of Senior Scientific Officer, Grade-I to the Department of Science & Technology.

(3) The Junior Analysts those are not found suitable under sub-rule (2) above and those who were working on regular basis on the date of commencement of these rules and complete 8 years of regular

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service subsequently, their cases will be reviewed by the Selection Committee every year for appointment as Senior Scientific Officer, Grade-I at the maintenance stage."

Sub-rule 2 of rule 1 of the 1985 amended rules provides that they shall come into force from the date of publication in the official gazette. It is necessary to point out that though provision has been made in rule 3 of the 1984 rules for initial constitution no steps were taken for initial constitution and induction of Junior Analysts as SSO Grade-I. It is only after sub-rule 2 and 3 of Rule 3 were substituted by the 1985 amended rules that steps were taken for the initial constitution so far as the absorption of Junior Analysts on regular basis as SSO Grade-I is concerned.

2. Unfortunately, for the petitioner he was rendered ineligible by the 1985 rules for being inducted at the initial constitution for being absorbed as SSO Grade-I, the reason being that he had not put in the prescribed minimum of 8 years regular service as Junior Analysts as on the date on which the initial constitution is required to be done <sup>under</sup> the rules. The petitioner's case is that under the 1984 rules he being the

Junior Analyst did have the qualifications for

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being absorbed as SSO Grade-I by the process of initial constitution prescribed by rule-3. The petitioner maintains that this vested right of his under the said statutory provisions cannot be denied to him by the 1985 amended rules. The petitioner does not dispute that he does not have the requisite qualifications in accordance with the 1985 amended rules for being inducted by way of initial constitution as SSO Grade-I. He, however, invokes the principle that vacancies that existed on a particular date must be filled up by applying the rules which were in force on that date. Hence on the date the 1984 rules came into force the petitioner being eligible should have been absorbed as SSO Grade-I. Merely because the petitioner becomes ineligible by the subsequent amendment of the 1985 rules he cannot be deprived of his right under the 1984 rules. The petitioner's counsel specifically drew our attention to sub rule 2 of rule 1 of 1985 amended rules which says that the amended rules shall come into force on the date of their publication in the official gazette. There is no express provision giving retrospective effect to the amended rules from the date on which the 1984 rules came into force.

The question for examination is as to whether

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this makes any difference so far as the reliefs claimed by the petitioner for absorption as SSO Grade-I by way of initial constitution is concerned, in the cadre of SSO Grade-I.

3. The stand of the respondents is that 1984 rules suffered from a serious error which was sought to be remedied by amending the same in the year 1985. As what is sought to be remedied is the mischief flowing from the 1984 rules, it is maintained by the respondents counsel that the amended rules stand substituted from the very date of the inception of the 1984 rules. He also submitted that this is a case of retrospective effect being given, in the sense that the substituted rules came into force from the date of promulgation of the initial rules. It was also maintained that if we grant the reliefs, as claimed by the petitioner it would mean perpetuating erroneously framed rules. It was submitted that the rule-making authority has the necessary power to rectify its own mistake, when it noticed that it has committed a mistake in the matter of promulgation of the 1984 rules. When the mistake is remedied by the amendment it was maintained that it is not just and proper for the Tribunal to command the authorities to perpetuate the mistakes. We shall examine these



problems in the matter of initial constitution in the following paragraphs.


4. If we look at the scheme of the 1984 rules on which the petitioner has relied it becomes apparent that the rules suffered from very serious infirmities. Under the 1984 rules absorption by way of initial constitution to the cadre of SSO Grade-I was possible only from among the Junior Analysts. Rule 3 of the 1984 rules does not make any provision for absorption of SSO Grade-II in the cadre of SSO Grade-I. If we look at the scheme that prevailed immediately before the 1984 rules came into force it becomes clear that Junior Analysts with three years experience are the feeder category for the cadre of SSO Grade-II and SSO Grade-II with five years regular service are the feeder category for the cadre of SSO Grade-I. But under the 1984 rules Junior Analysts who were in the feeder category of SSO Grade-II became entitled to be inducted as SSO Grade-I by way of initial constitution, whereas their own superiors viz. SSO Grade-II are kept out from consideration for being absorbed as SSO Grade-I by way of initial constitution. Discrimination was, therefore, writ large inasmuch as the inferior personnel viz. Junior Analyst were made eligible for induction as SSO Grade-I whereas their own superiors

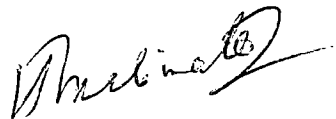
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viz. SSO Grade-II did not have that privilege. This would result in the officers of the junior cadre getting into the superior cadre of SSO Grade-I whereas their own immediate superiors viz. SSO Grade-II would become their juniors, as they would remain in the lower category. We have no hesitation in taking the view that sub rules 2 and 3 of the 1984 rules were violative <sup>of</sup> Articles of 14 and 16 of the Constitution. When the authorities noticed this problem they were justified in not implementing the rules which were void as offending Article 14 and 16 of the Constitution. The authors of the rules need not wait for the pronouncement of the Tribunal or courts that the said rules are violative of Articles 14 and 16 of the Constitution. If they themselves realised that what they have done is in violation of the constitutional provisions they are entitled to set the matter right. That is precisely what has been done in this case. When the mistake committed is rectified by replacing the void rules by valid rules, we would not be justified in issuing a direction for enforcing the void rules. It is on this short ground that this petition is liable to be fail.

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

  
(I.K. RASGOTRA)  
MEMBER(A)

  
(V.S. MALIMATH)  
CHAIRMAN

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