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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 651 1987.
T.A. No.

DATE OF DECISION September 2,1987.

Shri S.P. Joshi, Petitioner/Applicant.

Shri D.Das Chaufla, Advocate for the Petitioner(s)

Versus

Union of India & Ors, Respondents.

Shri P.P.Khurana, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to other Benches? No

(Kaushal Kumar)
Member
2.9.1987.

(K.Madhava Reddy)
Chairman
2.9.1987.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN. NO. OA 651/87. September 2,1987.

Shri S.P.Joshi ... Applicant.

Vs.

Union of India & Ors. ... Respondents.

CORAM:

Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

Hon'ble Mr. Kaushal Kumar, Member.

For the applicant ... Shri D.Das Chaufla, counsel.

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

(Judgment of the Bench delivered by Hon'ble Mr. Justice K.Madhava Reddy, Chairman).

In this application under Section 19 of the Administrative Tribunals Act,1985, the applicant calls in question the order notifying the vacancy of Research Officer (Occupational Research) in the Central Institute for Research and Training in Employment Service (for short 'CIRTES'), New Delhi to the Union Public Service Commission for filling up the same by direct recruitment. On the vacancy being notified, Advertisement No.13 was published on 28.3.1987 by the U.P.S.C. The applicant who claims that this vacancy must go to a promotee and he has a right to be considered for promotion to this post ~~XXX~~ contends that it cannot be filled in by direct recruitment. It may be stated that pending appointment to this post by direct recruitment, the applicant was promoted on

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ad-hoc basis and he is now holding the post of Research Officer (Occupational Research) in the CIRTES Pusa, New Delhi. The applicant is governed by the Central Institute for Research and Training in Employment Service(Class I and Class II posts) Recruitment Rules,1969 and his claim has to be considered under these Rules. Inter alia, Rule 10 of these Rules provides the method of recruitment as under:

"10. Method of Recruitment .

Whether by direct recruitment or by promotion ~~xxxxx~~ ~~xxxxxxxxx~~ or by deputation/ transfer & percentage of the vacancies to be filled by various methods.	By promotion failing which by direct recruitment 50% and by direct recruitment 50%".

While the applicant contends that all posts should be filled in only by promotion and direct recruitment can be resorted to only where a candidate is not available for promotion, it is the case of the respondents that 50% of the vacancies are reserved for promotees and have to be filled in by promotion and the remaining 50% by direct recruitment. Only if no candidate is available or found suitable for promotion, the quota of 50% reserved for promotees may also be filled in by direct recruitment and the remaining quota of 50% reserved for direct recruitment should necessarily be filled in by direct recruitment. The Rule is not happily worded. But the intention appears to be fairly clear. If as contended by the applicant, all the vacancies have to be filled in only by promotees

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alone and only where none is available for promotion, direct recruitment must be resorted to, then any reference to 50% by promotion in the Rule was wholly unnecessary. It is well-settled Rule of Interpretation of Statutes that where an interpretation leads to some of the words of the Statute being rendered redundant, such an interpretation should be avoided. In our view, the fact that 50% posts are to be filled in by direct recruitment, leads to the conclusion that the other 50% have to be filled in by promotion and if this method of recruitment by promotion fails, those posts also could be filled in by direct recruitment. For this purpose, we may supply the figure "50%" and "comma" after the words "by promotion" and delete the figure 50% after the words "failing which by direct recruitment" so that it reads "By promotion 50%, failing which by direct recruitment and by direct recruitment 50%".

The applicant wants us to interpret that the method of appointment is primarily by promotion and failing promotion it is by direct recruitment and that too is limited to 50%. The remaining 50% can never be filled in by direct recruitment. If this is accepted, then the words "and by direct recruitment 50%" occurring in the Rule against Column 10 would become wholly redundant. It is not permissible to read any portion of the statute in such a manner as to render any words therein redundant.

Maxwell on the Interpretation of Statutes,

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Twelfth Edition published by N.M.Tripathi Private Ltd., Bombay at page 228, Chapter 11 dealing with "Exceptional Construction" states that modification of the Language to meet the intention of the Legislature is permissible in the following words:

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence."

In NORMAN VERSUS NORMAN (1) their Lordships affirmed:

> "This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning".

The Golden Rule of Construction is that the gramatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some inconsistency with the rest of the instrument in which case the gramatical and ordinary sense of the words may be modified so as to avoid that absurdity or any inconsistency but no further.

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1. (1950 (1)All E.R.1082.

In Salisbury v. Gilmore(2) where the Court found that "Reading this section literally, as it stands, I think either that something is omitted or that the words in the section have, by inadvertence, been transposed", the Law Lords posed the question. "Is it, however, open to the court to transpose the words or to construe the words as if they were transposed? and observed:

> "No less an authority than PARKE, B., in LYDE V. BARNARD (1836), 1 M.& W. 101; 42 Digest 639; 426; 5 L.J. Ex. 117) had no doubt, apparently, but that, in construing an Act, the court might, in a proper case, transpose the language"

Parke, B., said in LYDE V. Barnard at page 115 as under:

> "The words of the clause in question are, it is to be observed, clearly inaccurate, probably from a mistake in the transcriber into the Parliamentary roll. We must make an alteration in order to complete the sense, and must either tranpose some words, and read the sentence as if it were 'to the intent or purpose that some other person may obtain money or goods upon credit' or interpolate others, and read it as if it were 'to the intent or purpose to obtain credit, money or goods on such representation'."

In Salisbury V. Gilmore it was observed:

> "So great an authority as PARKE, B., seems to have regarded it as unquestionably open to the court, where it is faced with language

(2) 1941(2) A.E.R. 817

> in a section of an Act of Parliament which is ungrammatical as it stands, but where, nonetheless, the intention of the section can be seen, to construe the section as though the words were transposed if by so doing effect can be given to the intention. Since, as the language stands, it does not make sense or effect the apparent intention of the section, and since a construction which, in effect, transposes one word which may well have been out of place inadvertently remedies an otherwise obvious omission of a matter radically important to the intention of the section, and obviates as well the necessity for concluding that the words to express a vital condition have been altogether left out, I am of opinion that the section should be construed as though the word 'would' were transposed in the manner I have indicated."

We are, therefore, of the view that it is permissible to transpose the words in the Rules to rectify the obvious grammatical error and to bring out the true intention of the Rule making authority.

The intention of the Legislature would be abundantly clear if the words "50%" first occurring in that clause is transposed and placed immediately after the words "by promotion" so as to read "by promotion 50% failing which by direct recruitment and by direct recruitment 50%."

Although there is no punctuation mark after

the words "by promotion" and before the words "failing which by direct recruitment" and also no punctuation between that expression and the expression 50%, the very fact that the Legislature felt it necessary to specify 50% at two places in that Rule, points out that 50% has to be by direct recruitment and 50% by promotion and if recruitment against this 50% promotion quota fails, that could also be filled in by direct recruitment. The sentence though notgramatically correct, by putting punctuation mark after the words "By Promotion", failing which "by direct recruitment 50%," the meaning would become clear, that is, if the method of promotion fails, direct recruitment can be resorted to for 50% posts. Since no statute should be read so as to render any words therein redundant, the remaining portion of that rule which states that "and by direct recruitment 50%" can be fully given effect to, by putting the punctuation mark "," as stated above. Thus 50% would be by direct recruitment and 50% by promotion. But if the method of promotion fails, then the 50% reserved for promotees could be filled in by direct recruitment.

In DADAJI Vs. SUKHDEOBABU (3), the Court observed that :

> "Punctuation marks do not control the meaning of a statutory provision if it is otherwise obvious".

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(3) AIR 1980 SC 150.

We may add, the failure to put the punctuation marks equally cannot control the meaning which is otherwise obvious. From a reading of the Rules in their entirety, we are clearly of the view that 50% of the posts are to be filled in by promotion and 50% by direct recruitment, failing the method of promotion 50% of seats reserved for promotees also could be filled in by direct recruitment. We may read this rule accordingly. If we supply the punctuation marks which is permissible in interpreting statute, then the meaning of the Rule Making Authority becomes patent and that is 50% by promotion, and 50% by direct recruitment; if the method of promotion fails even that 50% may be filled in by direct recruitment. We have, therefore, no hesitation in holding that in no event can all the posts be filled up by promotion as contended by the applicant. If the method of promotion fails, the 50% quota reserved for promotion also can be filled up by direct recruitment. But in any event, the other 50% reserved for direct recruitment cannot be touched; that has to be filled in by direct recruitment.

It is common ground that there are only two posts of Research Officer (Occupational Research) and one of the posts which fell vacant on 18.10.1977 was filled in by promotion on 8.3.1978. If in accordance with the Rules, the first post is to be filled in by promotion, the second vacancy has to be filled in by direct recruitment. It is, however, argued

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on behalf of the applicant that earlier, appointments to these posts were first made in 1971. These Recruitment Rules came into force with effect from 28.4.1973. Before these Rules came into force, in the year 1971, two persons were appointed as Research Officers in consultation with the UPSC. It is the case of the respondents that at that point of time, there were neither any Recruitment Rules nor any administrative instructions governing the recruitment to this post. In this situation, the Government consulted the UPSC and made the appointment by way of direct recruitment. Shri D.Das Chaufla, learned counsel for the applicant, however, contended that the Rules were drafted and pending the finalisation of these Rules, appointments were made; therefore, the draft Rules must be treated as 'Administrative Instructions' governing the appointment to these posts. If these are treated as 'Administrative Instructions', the two appointments made must be treated as appointments against roster point 2 and 4 reserved for direct recruits. Since after the commencement of the Recruitment Rules, only one person was appointed, that person would occupy roster point No.1 and the present appointment would be against roster point No.3 reserved for direct recruits. The respondents failed to maintain and observe the roster points in this behalf. It is unnecessary to go into the question whether a roster was maintained or not because any appointment made after the commencement

of the Rules has to be made in accordance with the Rules. The Rules while fixing the quota for direct recruitment and promotees make a specific provision for filling up posts in accordance with the quota - 50% by promotion and 50% by direct recruitment. These Rules having come into force in 1973 and no Rules or Administrative Instructions having been in force when the two appointments were made in 1971, those appointments cannot be said to be governed by quota system; nor were they required to be made in accordance with the roster. The Rules themselves do not specifically envisage any roster system. In fact the Rules as interpreted above, vest authority in the respondents to fill up all vacancies by way of direct recruitment, if the method of promotion fails. Any such appointment made would be in accordance with the Rules. Hence the promotees cannot insist upon strict observance of any roster system. After the Rules came into force, the first vacancy that occurred having been filled in by promotion, a promotee has no right to claim that second vacancy also should be filled in by a promotee on the strength of roster point not envisaged by the Rules. Any appointment made in accordance with the roster point as contended by the applicant would come into conflict with the Rules. In such a situation, the roster system not envisaged by Rules, if any, evolved to give effect to the Rules, must give way to the statutory Rules. In no event, the 50% quota reserved for direct recruitment can be

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given a go bye in filling up the vacancies. Hence the applicant's claim that he should be promoted cannot be upheld.

The applicant who is present in person also pleads that he is fully qualified and he has been promoted on ad-hoc basis. If at this stage, direct recruitment is made, and he is reverted, he will suffer irreparable loss. However, injured he may feel, so far as his appointment is concerned, that has to be made in accordance with the Rules. The applicant has to await his turn for promotion against the quota of promotees in accordance with the Rules.

In the result, this application fails and is accordingly dismissed. There will be no order as to costs.

(Kaushal Kumar)
Member
2.9.1987.

(K.Madhava Reddy)
Chairman
2.9.1987.