

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 163 of 1990 T.A. No. 199

DATE OF DECISION 25.9.1991.

Shri Suba Singh & Another Petitioner

Shri B.B. Raval Advocate for the Petitioner(s)

Versus

Union of India & Another Respondent

Shri K.C. Mittal _____ Advocate for the Respondent(s)

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

The Hon'ble Mr.D.K. CHAKRAORTY, ADMINISTRATIVE MEMBER

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

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J)).

Both applicants before us are working as Assistant Central Intelligence Officer Grade-II(W/T) in Intelligence Bureau.

They have prayed for the following reliefs:-

(i) To direct the respondents to amend the Recruitment Rules so as to allow the applicants to be promoted as Assistant Central Intelligence Officer Grade-I(W/T) without passing the Advance Maintenance Course;

- (ii) to exempt the applicants from passing the said course on the basis of crossing 45 years of age as allowed to others; and
- (iii) to give them retrospective promotion, difference of pay, arrears of pay and allowances and other benefits that might have accrued to their immediate juniors in the batch of General Duty

cadre and also give them the benefit of reservation quota applicable to the Scheduled Caste Officers.

2. Applicant No.1 joined as a Constable in Intelligence Bureau in 1964 and applicant No.2 as a Constable in 1962. They were thereafter promoted as Head Constables and as Junior Intelligence Officers Grade II. They were further promoted as Assistant Central Intelligence Officer Grade II (ACIO-II) in 1980 and were regularised in that grade in 1982.

3. The case of the applicants is that they were initially recruited as General Duty Constables but were drafted into W/T stream. The Recruitment Rules for the post of Assistant Central Intelligence Officer Grade I(W/T)(ACIO-Grade I(W/T)) stipulate that passing of Advance Maintenance Course (AMC) is a prerequisite. The applicants sought for exemption from the AMC which was not agreed to by the respondents in 1986. They have stated that the respondents gave exemption in 1983 to three officers - S/Shri C.D. Rai, S.S. Pathania and V.K. Verma - from passing the AMC on account of crossing the age of 45 years. They were also promoted to the grade of ACIO Grade I(W/T). The applicants have alleged that denial of the same treatment to them is discriminatory and violative of Articles 14, 15 and 16 of the Constitution. They submitted representations that if it was not possible for promoting them without passing the AMC, they should be sent back to their parent cadre (General Duty) on promotion to the rank of ACIO Grade I with retrospective effect, i.e., the date on

which their batch mates in General Duty cadre were promoted. They also submitted representations requesting for amendment of the recruitment rules to provide avenues for promotion of ACIO Grade II(W/T) (Non-graduates/Science) to the rank of ACIO Grade I(W/T) with retrospective effect. The respondents have turned down their representations. In their letter dated 30.8.1988, the respondents have stated that there will be no limit to the number of attempts that one could make. They have also added as follows:-

"The DIB felt that as a special case, the Government may be moved for amendment of the rules prescribing that in the case of unqualified ACIOs-II(WT), an exemption may be granted after they have completed at least 16 years of service as ACIOs-II(W/T) or are on the verge of retirement".

4. The respondents have stated in their counter-affidavit that in the public interest selected Constables were imparted WT training and those completing training successfully were offered the posts of Head Constable/WT (subsequently redesignated as JIO-BE(WT)). The applicants also were given WT training and after completion of training were offered the posts of JIO-II(WT) which they accepted and joined as JIO-II(WT). Having joined WT cadre they were promoted to higher posts in WT cadre according to their seniority/suitability and provisions of the relevant rules. They have stated that persons who were matriculates like the applicants and recruited as Junior

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Intelligence Officer Grade II are promoted to the rank of Junior Intelligence Officer Grade I and promoted further to the rank of Assistant Central Intelligence Officer Grade II. Next higher level for their promotion is Assistant Central Intelligence Officer Grade I. This is the first supervisory post in this cadre. The basic assignment upto the level of ACIO-II(WT) is operational, whereas Assistant Central Intelligence Officer Grade I are responsible for technical duties on installation and maintenance of equipment and technical work on development and operational support functions. Hence it has been laid down that all the officers of ACIO-II(WT) Grade whether direct recruit or promotee should undergo an extensive course covering both theoretical and practical aspects. This was necessary in view of the fast changing ex technology and induction of new equipment in the organisation. Moreover, persons who joined in sixties/seventies were having outdated knowledge about the new equipment/techniques. ACIOs-I(WT) have to repair and maintain not only the old sets but their replacements by new generation and computerised sets. In the interest of efficiency of the organisation, successful completion of Advance Maintenance Course as condition for eligibility for promotion to the rank of ACIO-I(WT) has been laid down in the

Recruitment Rules. From 1973 to 19th May, 1983, all ACIOs-I were required to pass AMC course within 2 years, as per Recruitment Rules. However, this provision of passing AMC subsequent to promotion was causing administrative difficulties as those who did not pass the test within 2 years were to be demoted. Hence the rules were revised on 20.5.1983 and passing of AMC course due to their lower academic qualification or non-Science qualifications. Hence the foundation course was started in 1987 for such persons so that they could be given basic knowledge of Science & Mathematics to enable them to pass AMC. This is only a preparatory course. Persons joining this course are treated as on duty and are entitled to all the facilities available to those joining a training course. The statutory recruitment rules for the post of ACIO-I(WT) prescribing inter alia condition of passing AMC had come into force in 1973 whereas the applicants were appointed as ACIO-II(WT) in 1980 on an ad hoc basis and in 1982 on regular basis. Hence, the applicants' contention challenging legality of AMC is totally baseless.

5. The respondents have admitted that the three officers mentioned by the applicants were granted exemption on 14.2.1982 as a one time measure. Subsequently, the Recruitment Rules were amended by Notification dated 20.5.1983 according to which ACIOs-II(WT) with 5 years regular service and having passed AMC course are eligible for promotion to the rank of ACIO-I(WT).

They have also contended that there are no rules prescribing grant of exemption to members of Scheduled Castes, to which category the applicants belong, from passing courses prescribed for promotion. They have stated that the question of amendment of the rules is still under consideration. However, the applicants have not completed 16 years of service as ACIO-II(W/T) or is on the verge of retirement. They have pointed out that there are nine persons who have studied upto Matric or Inter and have already passed this course. The reason stated by the applicant that they are Matriculates and have come from Arts stream is not tenable.

6. We have considered the rival contentions and have gone through the records carefully. The respondents have introduced the requirement of passing AMC course as a precondition to promotion as ACIO Grade I(W/T) having regard to fast changing technology and induction of new equipment in their organisation. It is also in evidence that even Matriculates who are promotees have passed AMC course. There is no limit to the number of chances that one may attempt for passing AMC course. In our opinion, the amendment of the rules making it mandatory to pass AMC course for promotion to the rank of ACIO Grade I(W/T) cannot be called in question on legal and constitutional grounds.

7. The claim of the applicant for granting them exemption like three others grounded on the basis of discrimination is also not tenable as neither of them had crossed the age of 45 years. The exemption was granted before the amendment of the rules.

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8. The respondents have stated that they are considering the question of amendment of the rules to exempt ACIO-II(W/T) who have completed 16 years of service or are on the verge of retirement, from passing ANC. Prescription of 16 years service might be intended to remove stagnation in the rank of ACIO-II(W/T). The Tribunal cannot issue any direction to the respondents to amend the Recruitment Rules, so as to give exemption to certain categories of officers, as that pertains to exercise of executive or legislative function. The Tribunal can only strike down a rule on the ground of illegality or unconstitutionality. We have expressed the opinion that there is no illegality or unconstitutionality in the rules prescribing passing of ANC as a precondition to promotion as ACIO Grade I(W/T). At the same time, we are of the opinion that the authorities concerned should devise ways and means of avoiding stagnation in the rank of ACIO-II(W/T), specially of those who are matriculates and persons belonging to the science ^{or} non-disciplines, like the applicants. The respondents should, therefore, take a decision on the question of amendment of the rules, as proposed by them, expeditiously. The application is disposed of with the above observations.

There will be no order as to costs.

Dekhelia 25/9/91
(D.K. CHAKRABORTY)

MEMBER (A)

Arvind 25/9/91
(P.K. KARTHA)
VICE CHAIRMAN (J)