

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA 1902/1990

DATE OF DECISION: 22.4.1992.

SHRI R.K. SAINI & OTHERS

...APPLICANTS

VERSUS

DELHI ADMINISTRATION AND OTHERS

...RESPONDENTS

CORAM:-

THE HON'BLE MR. B.S. SEKHON, VICE-CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS

SHRI B.B. RAVAL, COUNSEL.

FOR THE RESPONDENTS

SHRI JAGDISH VATS, COUNSEL.

1. Whether Reporters of local papers may be allowed

to see the Judgement? *yes*

2. To be referred to the Reporter or not? *yes*

I.K. Rasgotra
(I.K. RASGOTRA)

MEMBER(A)

22.04.1992.

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 1902 of 1990

Date of decision 22.04.1992.

Shri R.K.Saini and others Applicants

versus

Delhi Administration and others Respondents.

Coram : Hon'ble Mr. B.S.Sekhon, Vice Chairman
Hon'ble Mr. I.K.Rasgotra, Administrative Member.

For the applicant - Mr. B.B.Raval, Advocate
For the respondents - Mr. Jagdish Vats, Advocate

B.S.SEKHON:

Applicants herein were recruited as Supervisors in the Adult Education Branch in the Adult Education Department. The aforesaid Department comprises of two Branches. These being (i) Adult Education Branch and (ii) Social Education Branch. The grievance which the applicants seek to get redressed in the instant Application pertains to their non-promotion to the posts of Project Officers with effect from 1st Feb.1985. Applicants also seek to get set aside the alleged illegal promotion of respondents No. 3 to 5. The other reliefs sought by the applicants are that applicants may be directed to be promoted against 80% quota of direct recruits for which they are duly qualified and eligible. Ratio for promotional posts for all the feeder categories proportionate to their strength be fixed and the orders dated 9th April,1990(Ann.A-11) reducing the posts of Project Officers from 20 to 9 be quashed as illegal,

arbitrary and malafide.

2. Applicants had also sought interim relief. The request for interim relief was disposed of vide order dated 26th October, 1990. As per the aforesaid order, it was also made clear that the appointments made, if any, shall be subject to the final decision of the OA. The prayer for interim relief was, however, rejected.

3. Applicants were, admittedly, appointed as Supervisors in the Adult Education Branch after having been selected and interviewed by a Selection Committee. The next higher post in the line of promotion is that of Project Officer. One Shri B.S. Rana and another, who were working as Supervisors in the Adult Education Branch filed OA 53/86. The aforesaid OA was disposed of vide order dated 19-10-88 (Annexure A-2), after holding that the Supervisors (Adult Education) have the first pre-emptive right, as the feeder post, for promotion as Project Officers and denial of their right to be considered for such promotion is clearly a case of unmitigated discrimination. Another direction given by the Tribunal was that Supervisors (Adult Education) with five years service on 1.2.1985 be given notional promotion as Project Officers till they are retained in the Adult Education Wing. According to the applicants, they have been meted out step motherly treatment. Respondent No. 2 was determined to get rid of all employees who had come from the teaching profession and fill the Adult Education Branch by his favourites from the Social Education Branch. Some Project Officers and Supervisors (Adult Education) filed OA 2450 of 1989 (B.S. Rana and others vs. Union of India and others) challenging the abolition of posts of Project

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Officers/Supervisors, Adult Education as malafide, discriminatory and violative of Articles 14 and 16 of the Constitution. The aforesaid OA was disposed of vide judgment dated 19th December, 1989 (Annexure A-5). The judgment directed that the applicant therein should make a representation against the orders abolishing the posts and reverting them to the teaching cadre to the Lt. Governor Delhi as well as the Union Ministry of Education and Social Welfare and respondents should consider the representation and pass a speaking order not later than 28th February, 1990. The representations were rejected vide order dated 28th August, 1990.

4. The salient grounds pleaded by the applicants are that they are fully covered and protected by the judgment of the Tribunal, are eligible to be promoted against 20% promotion quota with effect from 1-2-85, having completed five years' service in the relevant grade on that date. Respondents No.3 to 5 were not even eligible to be considered for promotion as Project Officers because they did not meet the stipulated educational and experience requirements. The sanctioned posts of Project Officers numbering 20 have been arbitrarily reduced to 9 so as to intentionally deprive the applicants of their promotional avenues and the applicants are sought to be completely ousted from the stream by filling up the posts of Project Officers on fixed honorarium of Rs. 1500/- P.M. Respondent No.2, who is a habitual in misdemeanour and disobeying the seniors' written orders has got a vested interest in filling up these posts by open recruitment. Applicant's fundamental

rights under Articles 14, 16 and 21 of the Constitution have been violated. The action of the respondents in abolishing the posts is not in good faith and runs contrary to the ratio of the judgment of the Apex Court in 'K.Rajendran vs. State of Tamil Nadu - 1982(2) SCC 285. Applicants have got the first pre-emptive right to be considered as the first of the feeder categories for promotion to the posts of project Officers.

5. Respondents' defence as set out in the counter is that the Administration reviewed its policy, on the basis of the directions of the Govt. of India, the Adult Education Scheme was modified and the posts of Project Officers in the grade of Rs. 1640-2900 were abolished with effect from 24-11-89 and posts on fixed honorarium were created and advertised. The filing of the OA is gross abuse of the process of the law. The Ministry of HRD rejected applicants' representations and the Lt. Governor, Delhi rejected their representations on 28-8-90. The abolition of the posts has been challenged by some other applicants in OA No.1822/88. Applicants cannot now challenge the Recruitment Rules, which were notified on 27th August, 1983 that 80% of the quota meant for direct recruits be given to them. The challenge to the recruitment rules is time barred. The applicants have not challenged the abolition orders dated 24-11-89 and cannot do it now. After stating that applicant No.1 - Shri R.K.Saini has attained the age of 58 years and is working as a Teacher, respondents have averred that the Application is time barred. The judgment dated 19.10.88 was fully implemented. Respondents have also controverted the other grounds pleaded by the

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applicants.

6. We have heard the arguments addressed by the learned counsel for the parties and have also considered the pleadings, documents on record, the records produced by the respondents as also the written submissions filed by the applicants.

7. A perusal of the Recruitment Rules, Annexure A-1 makes it evident that only 20% of the posts of Project Officers were to be filled up by promotion and 80% were to be filled up by direct recruitment. Applicants have, however, asked for a direction to be promoted against the 80% quota of direct recruits for which all of them are stated to be duly qualified and also eligible. Since only 20% of the posts of Project Officers are to be filled up by promotion, applicants cannot seek appointment by promotion against 80% quota of direct recruits. It is, however, an altogether a different question that such of the applicants as may be eligible and apply for the posts of Project Officers meant for direct recruits could be considered for selection provided that the posts are there. This brings us to the important question pertaining to the validity and legality of the order dated 9th April, 1990 (Annexure A-11) and that of order No.F.13-5(3)/90/AE dated 25th June, 1990. By virtue of Annexure A-11, the number of posts of Project Officers has been reduced to 9. During the course of arguments, the learned counsel for the applicant strongly assailed the reduction of the number of posts of Project Officers as also the policy envisaging appointment of Project Officers on the basis of fixed honorarium of Rs. 1500/- per mensem. The action of the respondents abolishing the posts as also substituting the

same by the modified Scheme was also the subject matter of attack in OA No.1822/90 entitled 'B.S.Rana and 34 others versus Union of India and others' and the related OAs. The aforesaid OAs have already been disposed of vide judgment dated 6-3-92. These questions were considered threadbare in the aforesaid judgment.

It is scarcely necessary to reproduce the reasons and the discussion for which the view taken in that judgment had been taken. As per para 22 of the judgment, it was held that OA 1822/90 in-sofar as it seeks to challenge the impugned order dated 28th August, 1990, Annexure A-VII in that OA merits rejection. We may add that the question of retaining a particular number of posts or reduction of certain posts which are also temporary is a question to be decided by the authorities concerned in the exercise of their policy domain. It is not within the province of a court or Tribunal to encroach upon such powers of the Executive, unless, of course, the decision is mala fide or has been taken on extraneous considerations. The aforesaid aspects have already been considered and adjudicated upon in our judgment dated 6-3-92.

Thus the challenge of the applicant to Annexure A-11 fails. As a necessary corollary to the aforesaid, the challenge to the order dated 25-6-90 which is regarding filling up the posts of Project Officers on honorarium basis also fails. We may incidentally mention that applicants have not made any specific prayer for quashing the orders dated 25.6.90, although ⁱⁿ para 1 of the Application pertaining to the particulars of the order against which the Application is made, order No.F.135(3)/90/AE dated 25.6.90 has also

been mentioned.

8. Turning to the grievance of the applicant pertaining to their non-promotion to the posts of Project Officers w.e.f. 1-2-85 in terms of the judgment dated 19-10-88, rendered in OA 53/86, it may be stated that the aforesaid question too has been considered in the judgment dated 6-3-90. The view taken on this point in the aforesaid judgment is that if the officials promoted are junior to the applicants, applicants would be entitled to be promoted, if found suitable by the DPC w.e.f. 1.2.85. So far as the promotion of the private respondents to the posts of Project Officers is concerned, it is for the administrative department to take a decision thereon in the light of the decision taken in this case in the matter of promotion of the applicants keeping in view the inter-se seniority of the applicants viz-a-viz. the private respondents.

9. In the premises, the respondents are hereby directed to convene a DPC for considering the eligible applicants for promotion to the posts of Project Officers in conformity with the judgment dated 19-10-88 (Annexure A-2). Respondents shall promote such of the applicants as are found suitable for promotion to the posts of Project Officers by the DPC. Such applicants shall also be entitled to consequential benefits in accordance with law^{and applicable instructions.} The respondents shall, however, be free to repatriate the applicants on account of abolition of posts/modification of the Scheme on the basis of the principle of 'first come, first go'. It is scarcely necessary to add that this

direction shall not apply to such of the applicants as may have already been repatriated or may have retired save for the period for which they had continued to work in the Adult Education Wing.

8. Adverting to the relief seeking a direction that the applicants may be promoted against 80% quota of direct recruitment for which they are stated to be duly qualified and eligible, it may be added that apart from the fact that the Recruitment Rules do not make provision for promotion of the officials in the feeder category against the quota stipulated for direct recruits, it may be added that the portion of the Rules making provision for filling up 80% quota by direct recruits has not been invalidated in the judgment dated 19th Oct., 1988 (Annexure A-2) rendered in OA 53 of 1986. Some of the applicants herein assailed the Recruitment Rules in the aforesaid OA. It would be useful to reproduce the operative portion contained in para 16 of ~~that~~ judgment. It reads thus:

"In the facts and circumstances, we allow the petition and declare that the Recruitment Rules for the post of Project Officers Grade-II notified on 27.8.83 suffer from the vice of discrimination and are violative of Articles 14 and 16 of the Constitution insofar as they exclude Supervisors (Adult Education) as one of the feeder categories for promotions. We, therefore, set aside the Recruitment Rules only to the extent of such exclusion and direct that like Supervisors (SE), Supervisors (Adult Education) with five years of experience in the grade should also be included as the first of the eligible categories for promotions. A review DPC should be held to consider Supervisors (Adult Education) with five years of service as on 1.2.1985 when respondents 3 to 6 were promoted and if some of them are included in the panel within the

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number of vacancies of Project Officers available on that date they should be given notional promotion as Project Officers till they are retained in the Adult Education Wing. Action on the above lines with payment of arrears of higher pay and allowances, if any, should be completed within a period of three months from the date of communication of this order. There shall be no order as to costs."

The Rules insofar as they provide for 80% appointment by direct recruitment cannot be challenged again by the applicants on the ground of excessive quota for direct recruitment. There is also substance in the plea of the respondents that the challenge to the Recruitment Rules on this count is barred by limitation.

9. During the course of arguments, the learned counsel for the applicants dwelt at length on the alleged illegal promotion of respondents No.3 to 5. It was stressed by the learned counsel for the applicants that respondents No.3 to 5 were not only junior to the applicants but were also far inferior and even educationally ineligible to be appointed to the posts of Project Officers/Supervisors. The learned counsel further submitted that as the applicants were in the first of the eligible categories for promotion, they were entitled to be promoted on regular basis w.e.f. 1-2-1985. We are unable to persuade ourselves to quash the promotion of respondents No.3 to 5 for the reason that there is no clinching material to establish that they lack eligibility qualification for being promoted to the posts of Project Officers. The interest of the applicants are, however, being safeguarded to the

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extent to which they are legally sustainable.

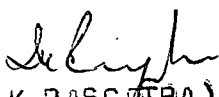
Another submission made by the learned counsel for the applicants on the basis of 'first come, last go' was that the applicants were entitled to continue in the Adult Education Wing for the reason that their junior had been continued. The plea of the applicants to continue on the basis of the aforesaid principle of 'last come, first go' can be upheld only if juniors to the applicants had been continued and there are posts of Project Officers for retaining the applicants. It would bear repetition to state that the claim of the applicants to continue in the Adult Education Department on the abolition of the posts of Project Officers/Supervisors cannot be sustained on the ground that the order of abolition of the posts dated 28-8-90 or of reducing the number of posts as per Annexure A-11, are bad.

10. MP 745/91 has been moved by Sarvshri S.K. Miglani and Arjan Das Batra for deleting the names of respondents No. 3 to 5. Since the matter is now being decided finally, it is unnecessary to consider the request for deleting the names of the aforesaid respondents.

12. In view of all what has been said and discussed hereinabove and in view of our judgment dated 6.3.92 rendered in OA 170 of 1987, it is hereby directed to consider the applicants for promotion to the posts of Project Officers w.e.f. 1.2.1985 in accordance with the judgment dated 6-3-92 rendered in OA 170 of 1987 by convening a fresh DPC. In case the applicants/applicant are/is found suitable to be promoted by the DPC, they/he would also be entitled to consequential benefits in accordance

with law and applicable instructions. Respondents shall comply with this direction within a period of three months from the date of receipt of copy of this judgment. Respondents are further directed to continue such of the applicants as are senior to their colleagues who may have continued on the posts of Project Officers/Supervisors in accordance with the principle of 'first come, last go' till such time as the juniors are continued in the aforesaid posts. Applicants would also be entitled to the payment of salary of the posts of Project Officers/Supervisors as the case may be till the period they have been or are continued in the Adult Education Wing. The respondents shall also pay such amount as may be found due to the applicants as a result of compliance with this judgment and in accordance with law and applicable instructions within a period of 4 months from the date of receipt of copy of this judgment, failing which respondents shall have to pay interest at the rate of 12% on the amount found due to the applicants for the period till the date of actual payment.


13. The OA is accepted to the limited extent referred to in the preceding para and is rejected in all other respects. OA stands disposed of accordingly, but in the circumstances, with no order as to costs.


(I.K. RASGOTRA)
AM


(B.S. SEKHON)
VC.

16-4-92

Pronounced by me today in the Open Court.


(I.K. RASGOTRA)
MEMBER (A)
22.04.92.