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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2257/90

New Delhi this the 17th Day of November, 1994

Hon'ble Mr. Justice S.C. Mathur, Chairman

Hon'ble Mr. P.T. Thiruvengadam, Member (A)

Shri Vidaya Sagar,
S/o Shri Jamna Dass,
Resident of 6/1-C Sector II,
Gole Market, New Delhi-110 001.
(By Advocate : Shri U.S. Bisht)

... Applicant

Vs.

1. Union of India, through
Secretary to the Govt. of India,
Ministry of Defence,
New Delhi.

2. The Joint Secretary (Admn.),
& Chief Administrative Officer,
Ministry of Defence,
New Delhi.

(By Shri M.S. Ramalingam,
Departmental Presenting Officer)

... Respondents

O R D E R (Oral)

Hon'ble Mr. Justice S.C. Mathur, Chairman

The dispute in this petition pertains to promotion from the post of Assistant to the post of Assistant Civil Staff Officer in the Office of the Joint Secretary (Administration) & Chief Administrative Officer under the Ministry of Defence, Government of India.

2. The applicant joined the aforesaid office as Lower Division Clerk on 2.4.1961. After promotion to the post of Upper Division Clerk he was promoted to the post of Assistant on 21.10.1980. The next post to which he could look forward for promotion was the post of Assistant Civilian Staff Officer (ACSO). In the year 1989 a Departmental Promotion Committee (DPC) met to select candidates for promotion against 58 vacancies. In the seniority list the applicant was at No. 40 and he fell within the zone of

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consideration. Accordingly the DPC prepared a list of 58 Assistants which it recommended for promotion against the 58 vacancies. The applicant's name was not included in the list. In the counter affidavit it has been stated that his name was not included on account of his comparatively lower merit vis-a-vis those included in the panel. Against his non-inclusion in the select list, the applicant preferred representation on 4.8.1989 which was rejected on 24-10-1989 (Annexure A.1). The applicant has approached this Tribunal thereafter.

3. In the present original application the plea of the applicant is that the selection was not held in accordance with the instructions issued by the Department of Personnel on 10.3.1989 which were circulated by the Ministry of Defence to its subordinate offices through Annexure A.3.

4. In the counter affidavit filed on behalf of the respondents it has been asserted that the defence department has got its own rules and regulations for holding the selection and the selection in question was held strictly in accordance with the regulations notified on 28 November, 1968. A copy of these regulations framed under Rule 11(2) of the Armed Forces Headquarters Civil Service (Rules) 1968 has been placed on record as Annexure R-1 to the counter affidavit.

5. It is not the claim of the applicant that the selection was not held in accordance with the regulations of 1968. In fact, the learned counsel for the applicant conceded that there is no infirmity in the selection with reference to the regulations of 1968. Therefore, the short

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question for consideration is whether the instructions issued by the Department of Personnel are relevant for the purposes of the selection in question.

6. Armed Forces Headquarters Civil Service (Rules) 1968 have been framed in exercise of the power conferred under proviso to rule 309 of the Constitution. The said rules are therefore statutory in nature. Rule 11(2) of these rules confers powers upon the Central Government to frame regulations. It is in exercise of this statutory power that the regulations of 1968 have been framed. Accordingly the regulations also have statutory force. The learned counsel for the applicant invites our attention to regulation 4 (7) for submitting that by virtue thereof the instructions issued by the Department of Personnel will form part of the regulations. Clauses 7 and 8 of Regulation 4 which are material for consideration of the dispute read as follows:-

"(7) Subject to the orders of the Central Government, the recommendations of the Commission or the Departmental Promotion Committee, as the case may be, as regards classification, shall be accepted."

(8) The Select List shall be prepared by including the required number of names first from amongst the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good'. The names shall be arranged inter se within each category in the order of their seniority."

According to learned counsel Clause 7 specifically provides that the selection shall be subject to the orders of the Central Government. This, according

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to the learned counsel, amounts to adoption by the Regulations of the orders of the Central Government. It is on this premise that the learned counsel gives statutory status to the instructions issued by the Personnel Department.

7. There cannot be any dispute that where a statutory provision adopts non-statutory provision, the latter will acquire statutory status. The instructions issued by the Personnel Department do not disclose the source of the exercise of power. It is apparent therefore that the said instructions are non-statutory. The question for consideration is whether they have been adopted by the Regulations. They may be said to have been adopted by the Regulations if the term "Central Government" used in Clause 7 of Regulation 4 can be said to refer to the Personnel Department of the Central Government.

8. The Central Government has various departments and ministries. Each department or ministry is competent to frame its own Rules and Regulations regarding recruitment, promotion etc., of the staff placed under it. The Personnel Department deals generally with service matters of Central Government employees. Thus, Personnel Department is a general department while other departments, including the Defence Department, are specific departments. It is trite that specific exclude the general. Therefore, the term Central Government used in Clause 7 will mean or include Personnel Department only if it has been so included specifically or by necessary implication.

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9. Annexure R-1 shows that the Regulations have been framed by the Central Government in the Ministry of Defence. They have not been framed by the Ministry of Personnel. Therefore, the term Central Government used in the Regulations will normally mean Central Government in the Ministry of Defence. This is subject to any specific or implied provision to the contrary in the Regulations. We may now consider whether there is any such provision in the Regulations. Our attention has ^{been} not invited by the learned counsel to any such provision. The term Central Government has not been defined in the Regulations to give it a meaning different from the normal meaning. Accordingly, in our opinion, the term Central Government used in Clause 7 refers only to the Central Government in the Defence Ministry. Ministry of Personnel is obviously not included.

10. The Scheme of the Regulations also negatives the suggestion of the learned counsel. Regulation 3(1)(a) confers powers on the Central Government to constitute a Selection Board for making selection for promotion to the grades of Civilian Staff Officers. Obviously, this Board will be constituted by the Central Government in the Ministry of Defence. Regulation 4 deals with the various steps to be taken in the preparation of the select list. Clause 2 of this Regulation lays down that the Central Government shall determine the strength of the officers to be included in the select list.

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This exercise, again, will obviously have to be carried by the Central Government in the Ministry of Defence. Clause 3 requires the names of the officers who fulfil the prescribed eligibility conditions to be arranged in a single seniority list. Under Clause 5 the Selecting Authority is required to classify the officers ~~consider~~ considered fit for promotion as "Outstanding", "Very Good", or "Good" on the basis of merit. After this classification has been done by the Selecting Authority, the matter is governed by Clause 7. This Clause provides that subject to the order of the Central Government, the classification made by the Selecting Authority shall be accepted. In other words the classification made by the Selecting authority is final subject to the alteration which may be made by the Central Government only. In this interpretation there is no scope for the arguments advanced by the learned counsel for the applicant.

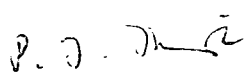
11. As already noticed under Regulation 3(1)(a), the Central Government is required to constitute the Selection Board. It is not the case of the applicant that the selection is made by the Personnel Department. If the selection has to be made by the Defence Ministry or Department, the term Central Government used in Regulation 3(1)(a) will have to mean Central Government in the Ministry of Defence. This was conceded to even by the learned counsel for the applicant. Once it is conceded that the term Central Government used in Regulation 3(1)(a)

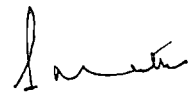
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connotes Central Government in the Ministry of Defence the said term will have to have the same connotation throughout in various Clauses of the Regulation. It cannot have one connotation in one Clause and another in the other.

12. At this stage the learned counsel for the applicant states that he did not concede that the term Central Government in Clause 3(1)(a) means Central Government in the Ministry of Defence. Even if we ignore the concession of the learned counsel our finding remains the same for the reasons already recorded. We may however point out as to why we have mentioned the concession of the learned counsel. We asked the learned counsel as to which department of the Central Government will constitute the Selection Board under Regulation 3(1)(a) and on our suggestion that it will have to be the Defence Department, he did not dispute. If the learned counsel chooses to say that it is not his concession, it is only unfortunate.

13. In view of the above, the application fails and is hereby dismissed with costs quantified at Rs. 500/- to the respondents.


(P.T. Thiruvengadam)
Member(A)


(S.C. Mathur)
Chairman

'Mallick'
'Mittal'

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

M.A.3643/94 in
C.A.2257/90

New Delhi, this the 17th day of November, 1994

HON'BLE MR. JUSTICE S.C.MATHUR CHAIRMAN

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER (A)

Shri Vidya Sagar ..Applicant
(By Shri U.S.Bisht, Advocate)

Vs.

Union of India & others ..respondents
(By Shri M.S.Ramalingam,
Departmental Presenting Officer)

ORDER (Oral)

HON'BLE MR. JUSTICE S.C.MATHUR CHAIRMAN

Through this application the respondents seek to bring on record photo copy of a judgment rendered by a Bench of the Tribunal. There is no objection by the learned counsel for the applicant. The application is accordingly allowed.

P. T. Thiruvengadam
(P.T.THIRUVENGADAM)
Member (A)

S.C. Mathur
(S.C.MATHUR)
Chairman.

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