

CENTRAL ADMINISTRATIVE TRIBUNAL.

PRINCIPAL BENCH, NEW DELHI.

D.A. No.200/1990 and D.A. No.431/1990

New Delhi, dated this 23rd day of September 1994.

HON'BLE MR. P.T. THIRUVENGADAM, MEMBER (A)

HON'BLE MR. T.L. VERMA, MEMBER (J)

D.A. No.200/1990

Shri Brahm Prakash,
Section Officer,
GE(E)
Cabinet Secretariat (SW)
East Block-IX, Level-V, R.K. Puram,
aged about 38,
S/o Shri Harchain Singh,
WP-288, Wazirpur,
Delhi-52.

... Applic.

By Advocate: Shri E.X. Joseph.

Versus

1. The Union of India through the Cabinet Secretary, South Block, Central Secretariat, New Delhi-11.
2. The Secretary (B), Cabinet Secretariat, 8-B, South Block, Central Secretariat, New Delhi-11.
3. The Additional Secretary (SR), Cabinet Secretariat, Bikaner House, New Delhi.
4. The Director of Accounts, Cabinet Secretariat, East Block-IX, Level-VII, R.K. Puram, New Delhi-66.
5. Mrs. Rashmi Jain, Asstt. Director of Accounts (SW), O/O the Director of Accounts, East Block-IX, Level-V, R.K. Puram, New Delhi-66.

... Respondents.

By Advocate: Shri M.M. Sudan for official respondents.

Shri C.D. Gupta for Respondent No.5.

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ORDER (Oral)

Hon'ble Mr. P.T. Thiruvengadam.

These 2 OAs ^{are} clubbed together for the purposes of disposal, since the grounds are similar and the prayers are same. Respondent No.5 was promoted on 3.2.1989 as Assistant Director of Accounts from the grade of Section Officer. This promotion has been assailed in both these OAs, where it has been prayed that the promotion of Respondent No.5 should be set aside. The other relief claimed are related to the main relief and arise as of consequence.

2. The brief facts of the case relating to the 2 OAs are as under:

It is admitted by both sides that 4 vacancies had to be filled up by promotion during 1988-89 against the 80% quota. The relevant rules regarding promotion contained in the notification dated 18.8.1975 (Annexure A-1) to the application and the paragraphs and schedule, which are relevant for consideration of the OA are reproduced below:

Rule No.8: Subject to initial constitution of various grades in the cadre, every post remaining unfilled and every vacancy that arises thereafter shall be filled in accordance with the provisions contained in Schedule-II, by appointment on promotion, deputation, re-employment after retirement or direct recruitment, as the case may be.

Notwithstanding the percentage limits specified in Column 11 of the Schedule II for the filling up of vacancies by deputationists, the Controlling Authority may, if that authority considers it necessary so to do exceed the limit aforesaid in relation to deputationists and also decrease the percentage prescribed in relation to promotion, direct recruitment or re-employment after retirement, as the case may be to such extent as the authority may deem fit.

Rule No.10: Promotion to the post of Asstt. Director of Accounts

Not exceeding one half of the vacancies to be filled by promotion in respect of posts specified in item III of Schedule II, may be filled by

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1. Shri N.C. Saxena,
S/o Shiv Shankarlal Saxena,
Section Officer (Fund-I),
O/O The Director of Accounts,
Cabinet Secretariat,
East Block-IX, Level-VI,
R.K. Puram, New Delhi.
R/o 927-A, Rani Bagh, Shakur Basti,
Delhi-34.
2. Shri H.S. Garg,
S/o Shri M.M.L. Garg,
Section Officer NGE-VI,
O/o the Director of Accounts,
Cabinet Secretariat,
East Block-IX, Level-VI,
R.K. Puram, New Delhi.
R/o S-9/527, R.K. Puram,
New Delhi.
3. Shri J.K. Gillon,
S/o Shri Narain Dass Gillon,
Section Officer (SW),
O/o the Director of Accounts,
East Block-IX, Level-V,
R.K. Puram, New Delhi.
R/o B-78, Derawala,
New Delhi.
4. Shri D.K. Sibal,
S/o Shri D.P. Sibal,
Section Officer (SW),
O/o the Director of Accounts,
East Block-IX, Level-V,
R.K. Puram, New Delhi.
5. Miss Kartar Kaur,
D/o Shri Prem Singh,
Section Officer (Coord.),
Director of Accounts,
East Block-IX, Level-VII,
R.K. Puram, New Delhi. ... Applicant.

By Advocate: Shri E.X. Joseph.

Versus

1. The Union of India through the
Cabinet Secretary,
South Block, Central Secretariat,
New Delhi-11.
2. The Secretary (R),
Cabinet Secretariat,
8-B, South Block, Central Secretariat,
New Delhi-11.
3. The Additional Secretary (SR),
Cabinet Secretariat,
Bikaner House, New Delhi.
4. The Director of Accounts,
Cabinet Secretariat, East Block-IX,
Level-VII, R.K. Puram, New Delhi.
5. Mrs. Rashmi Jain,
Asstt. Director of Accounts (SW)
O/O the Director of Accounts, E. Block-IX,
Level-V, R.K. Puram, N. Delhi-66. ... Respondents.

By Advocate: Shri M.M. Sudan for official respondents.
Shri C.D. Gupta for Respondent No.5.

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promotion of Section Officers on the basis of merit from amongst the eligible Section Officers having an outstanding record and the remaining posts in the promotion quota not so filled in shall be filled on the principle of seniority-cum-fitness from amongst eligible persons.

Schedule-II

<u>1.</u>	<u>2.</u>	<u>3.</u>	<u>4.</u>	<u>5.</u>	<u>5.6.</u>	<u>8.7.</u>	<u>8.</u>	<u>9.</u>
III. Asstt. Director of Accounts.	8	General Central Service Class II.	Rs.590- 30-830 -35- 900.	Rs.590- 30-830 -35- 900.	Sele- ction post.	N/A	N/A	N/A
<u>10.</u>	<u>11.</u>					<u>12.</u>		
On trial for two years.	(1) By promotion 80%	(1) Promotion of Section Officers (Pay & Accounts) belonging to the cadre of Directorate of Accounts having at least 5 years experience in that grade.						
10.	(2) By Deputation 20%	(2) Accounts Officers [@] Note: The of the Indian Audit percentage and A/cs. deptt. or will be separated, Pay and increased A/cs. offices. corresponding in case an eligible candidate against Category (1) is not available.						
<u>13.</u>	<u>14.</u>	<u>15.</u>						
Class I	N/A							

3. The promotion against 20% by Deputation is not the issue under consideration.

3. The Rules regarding promotion as quoted above are also not being challenged. The case of the applicants in the 2 OAs is that the promotion against the 80% quota has to be by process of selection. They are relying on the classification of the posts as contained in Column 6 of the Schedule as per which the filling up of Assistant Director of Accounts has been shown as by process of selection. It is argued that not exceeding one half of the vacancies to be filled by

promotion; in this case not exceeding (2 posts) may be filled up by promotion of Section Officers on the basis of merit from amongst the eligible Section Officers having outstanding record. Reference was also made to the general instructions regarding zone of consideration for promotion to posts filled by selection. These instructions are as under:

"(a) The Departmental Promotion Committee (DPC) shall for the purpose of determining the number of officers who should be considered from out of these eligible officers in the feeder grade(s) restrict the choice as under, with reference to the number of clear regular ~~xx~~ vacancies proposed to be filled in the year:

Number of vacancies	Number of officers to be considered.
1	5
2	8
3	10
4 or more	3 times the number of vacancies. "

4. As per the applicants, since the maximum quota for consideration for Section Officers having an outstanding record is only ~~xx~~ 2, by following the general instructions for promotion, ~~Merit~~ ~~field~~, of eligible candidates should have been restricted to 8 as per the seniority. Instead of restricting the candidates to 8, 12 senior most candidates had been considered, as per the applicants, and because of this, Respondent No.5, who was at Seniority position No.12 happened to get empanelled against the provision for candidates of outstanding records. Hence it is argued that the inclusion of Respondent No.5 in the select list is irregular and that the appointment should be set aside.

5. On the other hand the learned counsel for the official respondents and the private respondent (Respondent No.5) emphasised on para No.10. Para No.10 is a special para

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relating only to promotion to the post of Assistant Director of Accounts. It is, therefore, the case that not exceeding one half of the vacancies i.e. 2 in this case are to be filled by considering only eligible Section Officers with outstanding records. For this purpose the term eligibility is to be interpreted as those Section Officers having atleast 5 years experience in that grade. From amongst those Section Officers, who have done more than 5 years service in the grade and who have outstanding records, the DPC is to consider on the basis of merit and place on the final select list that number of candidates not exceeding one half of the vacancies. After completing this process, the remaining vacancies are to be filled by seniority-cum-fitness.

6. It was further added ~~to~~ by the Counsels for the Respondents that any restriction by way of imposing a zone of consideration would make the special rule (Rule No.10) un-workable and provisions nugatory. It is their contention that hemming the consideration to a limited zone, even though related ^{to} number of vacancies may result in no candidates with outstanding records being available and the spirit of the rule not being fulfilled. The special rule provides for special consideration to pick and choose the candidates with outstanding records limited ^{to} not more than one half of the vacancies and only if ~~such~~ such efforts fail to that extent, the unfilled portion + the remaining one half of vacancies would be transferred to the other methods of filling i.e. Seniority-cum-fitness.

7. Having heard both the counsels, we note that the classification of post as selection post should not necessarily mean the general instructions regarding selection

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should be followed in toto. A perusal of the schedule II item No. III indicates that the general classification of selection equally applies ^{to} both modes of filling the posts viz. by promotion 80% and by deputation 20%. Obviously for filling up the post by deputation, general instructions regarding selection cannot apply in toto.

8. Again we note that Rule 10 is a special rule and specific provision is made only for the cadre of Assistant Director of Accounts. This rule apart from authorising the filling up of up to one half of the vacancies from outstanding candidates also provides for filling up the remaining vacancies for promotion by following the principle of Seniority-cum-fitness. Hence, the argument that the promotion should follow the general principle of selection, particularly when there is provision for filling up by seniority-cum-fitness cannot be accepted.

9. A close reading of Rule 10 of the notification convinces us that for filling up not exceeding one half of the vacancies, what is required is all ~~cases~~ cases of the Section Officers, who have ~~an~~ outstanding records should be short-listed for further scrutiny by DPC to decide on the basis of merit as to how many of them could fit against the one half of the number of vacancies. If more candidates, more than half the vacancies satisfy these criteria, then the empanelment of candidates by this ^{mode of} filling up the vacancies has to be restricted to not more than one half. If there is any deficiency, the rule provides for filling up the deficiency as well as the remaining vacancies by following the principles of seniority-cum-fitness. We have to hold that Rule 10 being a special instruction, it has to be interpreted only on the above lines and for the reasons we have already enumerated above, we cannot hold that the entire promotion should only by the detailed general instru-

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ctions laid down for filling up the posts on selection basis.

10. We, however, note that in the counter, the actual stand taken by the respondents does not come out clearly. At one place, it has been mentioned that the outstanding Officers are to be picked up from the entire list of eligible persons. In another place, it has been mentioned that zone ^{of} consideration was 12. Orally, it was stated that the former method was followed viz. considering the entire list of eligible persons. However, it is not necessary to go into these aspects, as admittedly Respondent No.5 was at 12 in the seniority position and it has not been made out that any one senior to Respondent No.5 having outstanding record has been superseded.

11. In the circumstances, the OAs are dismissed.
No order as to cost.

(T. L. VERMA)
MEMBER (J)

(P. T. THIRUVENGADAM)
MEMBER (A)

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Attested

Bimla Devi
(दिम्ला देवी)
(BIMLA DEVI)
कोर्ट अधिकारी/Court Officer
केंद्रीय प्रापान्त्रिक अधिकारी
Central Administrative Tribunal
कानून, वायनाड, जन्म, दिन अनुकूल
Pimpri Bench, Vandemat House
पिंपरी/New Delhi-110001

28/9/94.