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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. 998/90

New Delhi this the 13th day of January, 95.

Shri N.V. Krishnan, Vice Chairman(A).

Smt. Lakshmi Swaminathan, Member(J).

Shri Sridhar Prakash,  
S/o Shri Bholu Dutt Kukreti,  
R/o 15/293, Lodhi Colony,  
New Delhi.

... Petitioner.

By Advocate Shri A.K. Behera.

Versus

1. Union of India through  
The Secretary,  
Ministry of Home Affairs,  
North Block, Central Secretariat,  
New Delhi.

2. The Director,  
National Crime Records Bureau,  
Ministry of Home Affairs,  
East Block-VII, R.K. Puram,  
New Delhi-66.

... Respondents.

By Advocate Shri M.K. Gupta.

ORDER (ORAL)

Shri N.V. Krishnan, Vice Chairman(A).

The issue raised before us is a very simple though the respondents have needlessly tried to bring an extraneous issue which we are not required to consider, as will be shown presently.

2. The applicant before us was informed by the Annexure A-7 memo dated the 19th October, 1989 as follows:

"No. 33/4/89-Admn. II/NCRB  
Government of India  
Ministry of Home Affairs  
National Crime Records Bureau

East Block-7, R.K. Puram,  
New Delhi-110066.  
Dated:-19/10/89.

MEMORANDUM

With reference to his representation dated

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3-10-89 Shri Sridhar Prakash, SI is informed that while placing the case of promotion of SIs for promotion to the post of Inspector in the Computer and System Division before the DPC, the names of only eligible candidates who fulfilled the eligibility conditions for promotion prescribed in the rectt. rules were placed before the DPC. Since he did not fulfil the essential educational qualifications prescribed for promotion, his name was not included in the list for zone of consideration. Since S/Shri Anil Joshi and S.K. Pandey, though junior to him, possessed the requisite educational qualifications and fulfilled the conditions prescribed in the RRs, were recommended for promotion to the post of Inspector by the DPC and appointed to the post. Recruitment rules are published in the Gazette for general information. However, a copy each of the old RRs and revised rectt. rules for the post of Inspector is enclosed as directed by him.

Sd/-  
(S.K. Jain)  
Assistant Director (Admn.)

Shri Sridhar Prakash  
Sub-Inspector, INDRB."

He is aggrieved by this order and he has prayed for a number of reliefs.

3. The brief facts which are not disputed are, that the promotion to the post of Inspector, which was considered by the DPC as referred to in the impugned letter dated the 19th October, 1989, was governed by the Ministry of Home Affairs, (Directorate of Coordination Police Computers) Group 'A' and 'B' post Recruitment Rules, 1989 - 1980 Rules for short. The post of Inspector was classified into two categories, Inspector (Maintenance) and Inspector (Non-Technical). Both the posts could be filled up only by promotion and by transfer on deputation or transfer. It requires, for the purpose of promotion, five years regular service as a Sub-Inspector of Police in respect of departmental candidates. As there is no direct recruitment, the question whether educational and other qualifications required for direct recruits would apply to promotees or not is not relevant. In other words,

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no particular educational qualification was stipulated. These rules were superseded by the notification dated 16.12.1988 which brought into force a new set of Rules carrying the same title but of the year 1988 - 1988 Rules for short. These rules, admittedly, came into force from 31.12.1988. In regard to inspectors, the 1988 Rules provided for selection by direct recruitment also and educational qualifications were prescribed for direct recruits. The two categories of Inspectors under the 1980 Rules were merged into one and the method of recruitment by promotion was also maintained. It was specified that, in respect of promotion, the age restriction applicable to direct recruits would not apply to promotees but the persons who <sup>u</sup>qualify for consideration for promotion should necessarily have the educational qualifications of direct recruits.

4. Admittedly, a Departmental Promotion Committee meeting was held on 28.9.1989 and it is also admitted that, in this DPC, the vacancies of Inspectors which existed in 1986, 87 and 88 were considered by the DPC.

5. When the applicant found that his juniors were promoted and he had been left out, he made a representation to which the impugned Annexure A-7 memo is the reply. As seen therefrom, he has been informed that his name was not even put up for consideration before the DPC because he was not found to be an eligible candidate, he not fulfilling the essential educational qualifications prescribed for promotion. It is in this background the following reliefs have been sought:

- "(i) Grant of directions to the respondents to consider the applicant for promotion to the post of Inspector as per the provisions of the Recruitment Rules in force till 31.12.1988;

- (ii) Grant of orders striking down as ultra vires the provision in the amended Recruitment rules which came into force on 31.12.1988 laying down that the educational qualifications (Master's Degree in Statistics/Mathematics/Physics or Economics (with Statistics)/Commerce (with Statistics) prescribed for direct recruits will apply in the case of promotees;
- (iii) Grant of orders directing the respondents to lay down in the Recruitment Rules that the educational qualifications prescribed for direct recruits will not apply in the case of promotees;
- (iv) Grant of orders directing the respondents to grant promotion, if selected by the DPC, to the applicant from a date not later than the date from which his juniors have been promoted and to grant him due seniority and all other consequential benefits".

6. The respondents have filed a reply in which it is stated that the applicant has suppressed the information about the fact that he did not have the necessary length of service in the grade of Sub-Inspector to make him eligible for consideration for promotion to the rank of Inspector. It is, however, also contended that the DPC which met on 28.9.1989 did not consider the promotion of the applicant as he was ineligible on account of not having the prescribed educational qualifications.

7. When the matter came for hearing today, learned counsel for the applicant submitted that it is now settled law that, in such matters of promotion, the rule that should be made applicable is the rule which existed when the vacancy arose and not the rule which existed when the question of promotion was considered. Reference is made to the decision of the Supreme Court in Rangaiah's case, 1983(3)SCC 284. He also refers to the subsequent decision of this Tribunal in Shiv Narain Singh Vs. Union of India, 1991(1) SLJ(CAT)85. He also admitted that the applicant has no claim for being considered for the vacancies of 1986 because he did not then

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have the necessary length of service for such consideration. The learned counsel for the applicant submitted that he was not pressing the reliefs at Serial No. (ii) and (iii) extracted above. He, therefore, contended that as his case for promotion has not been considered in accordance with the 1980 Rules, which did not insist on any educational qualification, a suitable direction should be issued to the respondents in this behalf.

8. The learned counsel for the respondents contended that the applicant did not satisfy the other eligibility condition viz., he did not have the prescribed years of service required for consideration for promotion. It is for this reason also that his case was not considered by the DPC.

9. In answer to a pointed question as to whether the 1980 Rules would apply for considering promotions to vacancies which arose before 31.12.1988 <sup>U or</sup> whether the 1988 Rules were applicable, the learned counsel stated that the 1980 Rules alone would apply, and specification regarding educational qualification will be governed by those Rules only.

10. In our view, the impugned order reproduced in para 2 supra makes it very clear that the only ground on which the applicant's name was not even put up before the DPC was that he did not have the educational qualifications. He was <sup>U not</sup> informed that, in addition he did not have the necessary length of service. The question whether the applicant has the necessary length of service for being considered in respect of the 1987 and 1988 vacancies under the 1980 Rules is not a matter which directly arises from the impugned order. Therefore, the respondents cannot contend that this <sup>U O.A.</sup> has, in any case, to be rejected as the applicant does not have the necessary length of service. It is, therefore, not necessary for us to consider

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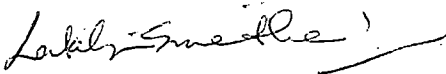
this disputed issue in this O.A. though raised by the respondents.

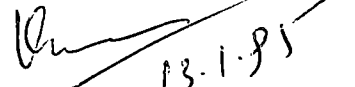
11. In the circumstance, this O.A. is disposed of as follows:

- (i) We declare that in respect of the vacancies of Inspectors which occurred before 31.12.1988, ie when the 1988 Rules came into force, recruitment has to be made in accordance with the 1980 Rules.
  - (ii) We direct the respondents to constitute a review DPC to consider the case of the applicant in the light of the 1980 rules for the vacancies which arose in 1987 and in 1988 before 31.12.1988.
  - (iii) The question whether the applicant has the length of service specified in the 1980 Rules for being eligible for consideration to the vacancies which arose before 31.12.1988 is a ~~xxxxxx~~ matter which the review DPC is at liberty to consider. <sup>u</sup> reply to the As that issue has been raised in the/O.A. but not decided by us, it is only fair to permit the applicant to submit his representation, if any, on this issue to the respondents within three weeks from the date of receipt of this order, and if such a representation is received that shall also be considered by the review DPC.
  - (iv) The review DPC shall furnish its recommendations within one month from the receipt of the representation, if any, and the respondents shall pass orders thereon, in accordance with law within one month from the date of receipt of the recommendations of the review DPC under intimation to the applicant.
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(v) In case the applicant is found fit for promotion, he shall be promoted from the date when others were promoted on the basis of the recommendations of the main DPC and he shall be entitled to all consequential benefits.

(vi) There shall be no order as to costs.

  
(SMT. LAKSHMI SWAMINATHAN)  
MEMBER(J)

  
13.1.85  
(N.V. KRISHNAN)  
VICE CHAIRMAN (A)

'SRD'