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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.2148/91

New Delhi, the 3rd day of June, 1996

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Udai Singh,
s/o Balaki Ram,
working as Binding & Cutting Machine Operator,
Directorate of Publications,
Central Board of Excise & Customs,
Gagan Deep Building,
Rajendra Place,
New Delhi.

... Applicant

By Advocate: Shri C. Hari Shanker

Vs.

1. Union of India
through
Secretary,
Ministry of Finance,
Deptt. of Revenue,
New Delhi.
2. The Chairman,
Central Board of Excise & Customs,
B.M. Building, Parliament Street,
New Delhi.
3. The Director of Publications,
Customs & Central Excise,
Rajendra Place,
New Delhi.
4. Shri Rajinder Kumar,
Gathering Machine Operator,
Directorate of Publications,
Customs & Central Excise,
C.R. Building, New Delhi.

... Respondents

By Advocate: Shri S.S. Dass, counsel for Respondents 1 to 3
Shri S.K. Gupta, counsel for official respondent 4

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant is aggrieved by the order dated
31.8.88 promoting respondent No.4 Shri Rajender Kumar to
the post of Gathering Machine Operator (G.M.O.) on ad hoc

[Signature]

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basis which he states is contrary to the circular dated 22.12.87 issued by the Manager, Press (Annexure III). His further representation against his non promotion to the post of GMD had been examined by the respondents and rejected by the order dated 18.3.91 (Annexure I). The applicant has, inter alia, prayed for the following reliefs -

- (i) To call for the records relating to the case of the applicant's appointment to the post of Gathering Machine Operator.
- (ii) That the impugned order dated 18.3.91 may be set aside.
- (iii) That the applicant may be appointed to the post of Gathering Machine Operator with effect from 23.12.87 when the Trade Test was held by virtue of his top position in the panel.
- (iv) That the appointment of Shri Rajinder Kumar may be declared irregular and invalid in the light of circulars dated 20.8.87 and 22.12.87.

2. The brief facts of the case are that the applicant was working since 13.11.78 as a Binding and Cutting Machine Operator in the office of respondents. On 20.8.87, the Manager, Press issued a circular in which it was stated that one post of G.M.O. in the pay scale of Rs.1400-2300 is likely to be filled up in the Directorate and interested incumbents of the Press who^{-se} names were given below may give their willingness for the Trade Test for the said post by 24.8.87. The name of the applicant as well as respondent No.4 appeared in the list of eight names given in the circular. Subsequently

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on 22.12.87 the same officer issued another circular in Hindi which according to the applicant states that "one post of G.M.O. in this Directorate (Scale Rs.1400-2300) is to be filled on the basis of the Trade Test." Four names were given in this circular including that of the applicant and respondent No.4

3. The applicant claims that he was placed first in the Trade Test and had made a representation on 5.8.88 for his appointment to the post of G.M.O. which is to be made on the basis of the Trade Test as per the circulars issued on 20.8.87 and 22.12.87. This representation was rejected by the respondents' letter dated 28.12.89. As mentioned above, on a further representation made by him orally to the Deputy Director(Admn.), Departmental Grievance Officer, the matter was again looked into and rejected on 18.3.91.

4. The respondents have taken a preliminary objection that the O.A. is barred by limitation under section 21 of the Administrative Tribunals Act,1985, as his representation was already rejected by the Deputy Director(Admn.) on 27.2.89 (Annexure VII). However, we find that the same officer had examined the grievance of the applicant again and given a detailed reply on 18.3.91 (Annexure I). This O.A. has been filed and listed for admission on 29.9.91.

js. Since the respondents have themselves

re-examined the matter afresh and rejected the applicant's case only on 18.3.91, the preliminary objection taken by the respondents on limitation is rejected.

5. The applicant's case on merits rests on the circulars dated 20.8.87 and 22.12.87 issued by the Manager, Press. Shri C. Hari Shanker, learned counsel for the applicant submits that since this is an admitted fact that the applicant had topped the selection in the Trade Test in terms of the circular dated 22.12.87, he ought to have been promoted to the post of G.M.O. because ^{the} circular specifically states that the post is to be filled on the basis of the Trade Test, which has been mentioned in the circular in Hindi as:

"ट्रेड परीक्षा के आधार पर भरनी है।"

The learned counsel for the applicant has further submitted that, if as stated by the respondents the selection has to be done on the basis of seniority-cum-fitness, and not on the basis of the Trade Test, in accordance with the Draft Recruitment Rules, then ^{the} neither the Draft Recruitment Rules nor any common seniority list has been published so far. He submits that since persons who were eligible to appear in the Trade Trade belong to ~~the~~ different trades as is evident from the circulars dated 20.8.87 and 22.12.87, there was no common seniority list among them. Therefore, the respondents cannot rely on the Draft Recruitment Rules for selection on the basis of seniority-

cum-fitness. He submits that the only method of selection that was brought to the knowledge of the candidates was the process of selection through the Trade Test. The learned counsel for the applicant relies on V.K. Srinivasan V. State of Karnataka (1987(1)SCC 658), D.B. Raju V. H.J. Kantharaj & Ors. (1990(4) SCC 178), State of Punjab V. Joginder Singh (AIR 1963 SC 913) and O.P. Ratra V. Secretary, Ministry of Urban Development (1980(6) ATC 132).

6. The respondents have filed their reply in which they have stated that the promotion of respondent No.4 has been properly done in accordance with the Draft Recruitment Rules. Shri S.S.Dass, learned counsel for respondents 1 to 3 has submitted that the various persons in the different trades belong to the same grade and some of them were holding single posts in the grade. Since all of them though holding different trades held identical scales of pay, they were grouped together as feeder category posts for promotion to the higher scale of GMD. The learned counsel submits that as per the proposal in the Draft Recruitment Rules, passing of the Trade Test was only one of the conditions for promotion and the post was to be filled on seniority-cum-fitness basis. They have stated that the post of GMD was being filled up for the first time. The Recruitment Rules have not yet been notified and hence all the appointments/promotions have been made on ad hoc basis on seniority-cum-fitness basis, based on the Draft Recruitment Rules. Since the applicant was junior to respondent No.4 inasmuch as the latter had joined the feeder grade earlier to the applicant, there was no irregularity in the selection done by the DPC.

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7. According to the respondents the circular dated 22.12.87 issued by the Manager, Press, in Hindi, is not the correct Hindi translation of the Establishment Circular No. DP/69/87/Estt. dated 10.12.87 (Annexure R-4) issued by the Assistant Director (Admn.). They further state that the Manager, Press is not the competent authority but the ^{Asstt.} Director (Admn.) is the competent authority to deal with the matters regarding appointments and promotions who had issued the circulars dated 18.8.87 and 10.12.87. The respondents had also produced for our perusal the circular dated 18.8.87 issued by the Assistant Director (Admn.) in this regard. They, therefore, submit that the post has been filled ~~by~~ according to the recommendations of the DPC on the basis of seniority-cum-fitness, subject to ~~the~~ qualifying of the Trade Test, and there was no infirmity in the procedure and they pray that the application should be dismissed.

8. Respondent No.4 has also filed his reply and we have also heard Shri S.K. Gupta on his behalf. He has more or less reiterated the arguments put forward by the official respondents namely that the promotion to the post of GMO has been filled according to the Draft Recruitment Rules on the basis of the seniority-cum-fitness subject to qualifying of the Trade Test.

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9. We have carefully considered the case and the arguments of the learned counsel for the parties and perused the record.

10. The claim of the applicant that the promotion to the post of GMO has to be filled up only on the basis of the Trade Test is squarely based on the circulars dated 20.8.87 and 22.12.87 issued by the Manager, Press. The Manager, Press has issued these circulars pursuant to the circulars issued by the Assistant Director (Admn.). We have seen the original circulars dated 18.8.87 and 10.12.87 of the Assistant Director (Admn.) which were submitted by the respondents for our perusal. These circulars nowhere indicate that the post of GMO was to be filled up solely on the basis of the result of the Trade Test. The Manager, Press in his circular dated 20.8.87 has also merely called the persons who were interested to appear in the Trade Test on 24.8.87 which circular was modified by the circular dated 20.12.87 indicating four names instead of ^{the} earlier eight names mentioned. The circulars issued by the Assistant Director (Admn.) also indicate that the Trade Test is only a qualifying one and in that view of the matter the Hindi translation of the circular dated 22.12.87 which admittedly has been issued by the Manager, Press in pursuance of the

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earlier circulars issued by the Assistant Director (Admn.) cannot assist the applicant, so as to modify the very intention of the circulars issued by the Assistant Director (Admn.) The Circular of the Assistant Director (Admn.) dated 10.12.87 also indicates that the result of the Trade Test was to be sent to him by 24.12.87 as DPC^{was} tentatively scheduled to be held on 29.12.87. Therefore, the ground urged by Shri C. Hari Shanker that because the applicant secured the highest marks in the Trade Test, he ought to be appointed to the post of GMD as per the Hindi version of the circular dated 22.12.87 is without any basis and is accordingly rejected.

11. The seniority list relied upon by the respondents dated 26.3.87 states that it is the seniority list in respect of Group 'C' and 'D' staff of the Directorate as on 1.1.87. In this list the applicant is shown as a 'Binding and Cutting Machine Operator' and respondent No.4, Shri Rajender Kumar, is shown as a Binding Assistant. The respondents state that ~~the~~ respondent No.4 is senior to the applicant by virtue of the fact that he had joined the office earlier than the applicant, and this fact is not disputed.

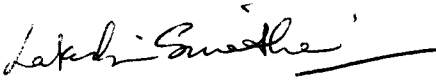
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12. As per the Draft Recruitment Rules, the passing of the Trade Test was only a qualifying test for the candidates. Although the Draft Recruitment Rules have not been notified, the respondents are not precluded from following the same (see B.N. Nagarajan Vs. State of Mysore (AIR 1966 SC 1942) and Ravi Paul & Ors. Vs. UOI & Ors. (JT 1995(1) SC 579). It is settled law that in the absence of rules, administrative instructions are binding. In this case, in the absence of the Recruitment Rules, the respondents cannot be faulted if the Draft Recruitment Rules are followed to make promotions on ad hoc basis in terms thereof. As per these Draft Recruitment Rules, promotions were to be made on seniority-cum-fitness basis. The respondents have stated that the various posts sanctioned in the department are only single posts in the grade and in order to avoid stagnation and ^{to} keep promotion avenues open to such officials holding single posts in the grade, provision for the persons holding such posts in identical scales of pay had been made for ~~the~~ promotion to the higher scales, keeping in view the nature of duties in the feeder posts and higher posts. The seniority list dated 26.3.87 published by the respondents shows that the four persons who were called for the Trade Test namely S/Shri Rajinder Kumar, Binding Assistant, Udai Singh, Binding and Cutting Machine Operator, ~~and~~ Santosh Kumar, Platemaker and

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Ugger Sain, Graining Machine Operator are holding single posts in the feeder category. In the seniority list the Group 'C' staff are holding the same grade in the feeder posts i.e. Rs.1200-2040. Since respondent No.4 joined the office on 9.6.78, he was placed senior to the applicant who joined on 14.11.78. Taking into account the facts and circumstances of the case, therefore, the combined seniority list of 1987 is in order. Therefore having regard to the provisions of Draft Recruitment Rules which have been followed by the DPC, it cannot be held that the respondents have either acted in an arbitrary or unreasonable manner in the process of selection to the post of G.M.O. to warrant any interference in this case. We have also considered the other arguments advanced by the applicant's counsel but for reasons given above, they are rejected.

13. In the result, this application fails and is dismissed. No costs.


(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)


(S.R. ADIGE)
MEMBER(A)

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