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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2331/2004

New Delhi, this the 30th day of November, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Malhotra, Member (A)**

1. Sh. Anup Singh
S/o Shri Naqul Singh
E-1197, Netaji Nagar
New Delhi – 110 023.
 2. Sh. N.C.Nair
Shri M.K.Narayanan Nair
B-31, Nanakpura
Moti Bagh-II
New Delhi – 110 021.
 3. Shri S.K.Bobal
S/o Late Shri Chanan Shah
H.No.88, Sector-16
Faridabad – 121 002.
Haryana.
 4. Mrs. J.Rangarajan
W/o Shri S.Rangarajan
F-284, Nanak Pura
Moti Bagh – II
New Delhi – 110 021.
 5. Shri J.S.Thapar
S/o Sardar M.S.Thapar
46/6, Double Storey
Jail Road, Tilak Nagar
New Delhi – 18.
 6. Shri Tsering Angchok
Shri Late Shri Tsering Paldon
F-8, Nauroji Nagar
New Delhi.
- ... Applicants

(By Advocate: Sh. V.S.R.Krishna)

Versus

Union of India & Others
Through

1. The Cabinet Secretary
Government of India
Cabinet Secretariat
New Delhi.

2. The Director General Security
Cabinet Secretariat
Govt. of India
Bikaner House Annexe
New Delhi.
3. The Inspector General, SFF
Directorate General of Security
Cabinet Secretariat
East Block - V
R.K.Puram
New Delhi - 66.

... Respondents

(By Advocate: Sh. B.S.Jain)

O R D E R(Oral)

By Mr. Justice V.S.Aggarwal:

Applicants are working as Personal Assistants/Private Secretaries. They were earlier with the Cabinet Secretariat, Government of India under the umbrella of the Directorate General (Security). The Directorate General (Security) comprises of three units, namely, Special Services Branch, Aviation Research Centre and Special Frontier Force. The Secretariat cadre of the Directorate General (Security) was common to all these units. The applicants belonged to the Secretarial cadre. The Special Frontier Force which is one of the constituent units of the Directorate General (Security) had been retained under the Cabinet Secretariat whereas the Special Service Bureau was transferred to the Ministry of Home Affairs.

2. The applicants had been posted in Special Frontier Force with its own Cadre and Seniority list. The next promotion from the post of Private Secretary is to the post of Assistant Director (Administration) in terms of the Recruitment Rules of the year 1975. It is to be filled from amongst **Section Officers and Selection Grade Stenographers/Private Secretaries with eight years** of regular service.



3. In terms of the reorganization of the cadre of the Stenographers, the Department of Personnel and Training had issued a Memorandum re-designating the posts of Selection Grade Stenographers as Private Secretaries.

4. The grievance of the applicants is that they are entitled to be considered for promotion to the post of Assistant Director (Administration) in accordance with the 1975 Recruitment Rules but for reasons best known to the respondents, they are not convening the Departmental Promotion Committee meeting and even the representation of the applicants has been rejected. In these circumstances, it is prayed that the impugned order rejecting their representation should be quashed. It should be declared that the applicants are entitled to be considered for promotion to the post of Assistant Director (Administration) as per the Recruitment Rules of the year 1975.

5. At this stage, it would be appropriate to refer to the impugned order which records the reasons in brief as to why the request of the applicants had been declined. The order dated 15.9.004 reads:

"Dated 15 Sept. 2004

This refers to your representation dated 8 July 2004/5 July 2004 respectively addressed to DG(S) regarding promotion of PSs to the post Asst. Director (Admn) in SFF.

2. Keeping in view the career prospects of PAs/PSs, DP&T was approached and the matter was discussed at length to make a provision in the RRs for "filling up the post of Asst. Director (Adm) by promotion of SOs and PSs alternatively". However, the same was not accepted by DP&T. Accordingly, a provision has been made in the proposed RRs to fill up the post of AD(A) in SFF 100% by promotion of SOs along the lines of provision in CSS Cadres.

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3. This is for your information.

Sd/-
(VIJAY SINGH)
BRIG.
DEPUTY DIRECTOR (AG)"

6. It is also not in dispute that in terms of the Recruitment Rules that had been notified in the year 1975, the post of Assistant Director could be filled up:

"In case of recruitment by promotion/deputation, grades from which promotion/deputation to be made."	
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<u>Promotion</u> of Section Officers and selection grade stenographers (RS) with 8 years of regular service in the respective Grade.	
<u>Deputation</u> of Officers holding the rank of Assistant Director or equivalent or persons eligible for appointment to such posts in the offices of the State/Central Governments."	

7. The application is being contested.

8. It has been pointed that in January, 2001, the Union of India took a policy decision to transfer the administrative control of the Special Service Bureau and CIOA from the Cabinet Secretariat. It was transferred to the Ministry of Home Affairs. As a consequence of transfer of the administrative control from Cabinet Secretariat to Ministry of Home Affairs, the Directorate General (Security) was trifurcated into three services. The Directorate General (Security) was a central organization and, therefore, it was exempted from the purview of the Union Public Service Commission. The learned counsel contended that the Rules relied upon of the year 1975 had not been notified. A policy decision is stated to have been taken that the post of Assistant Director (Admn.) in ARC is to be filled up 100 per cent by promotion from Section Officers only.

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9. We have heard the parties' counsel and have seen the relevant record.

10. The learned counsel for the applicants contended that so far as the Rules of the year 1975 were in force, the applicants were eligible to be considered for the post of Assistant Director (Admn.) and that even if there was an amendment that is yet to be made, the applicants have a right to be considered as per the said Rules in view of the decision in the case of **Y.V.RANGAIAH & ORS. v. J. SRINIVASA RAO & ORS.**, (1983) 3 SCC 284.

11. As against this, the respondents' plea was that no such Rules had been notified and in any case, the respondents can take a decision to fill up the post as per the amendment that is to be effected.

12. So far as the contention of the respondents that Rules are not required to be notified in terms of Article 309 of the Constitution is concerned, it must be stated to be rejected. This is for the reason that even while rejecting the representation of the applicants, it has specifically been mentioned that provision is being made in the proposed recruitment rules for filling up the posts by promotion from Section Officers. In other words, even as per the respondents, they have recruitment rules. Therefore, to contend that they are not being notified would not make any difference because if earlier Rules had not been notified and they are to be taken as administrative instructions, they will bind the respondents. However, the main dispute was that if the applicants can insist that the post must be filled up in terms of the earlier Rules whereby they were eligible to be considered for promotion as Assistant Director.

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13. In the case of **Y.V.Rangaiah (supra)**, the Supreme Court was concerned with the matter where panel for promotion was being prepared. There was a delay in preparing the same, which resulted in depriving of chances of promotion. Certain amendments had been made affecting the promotional chances of the eligible LDCs. The Supreme Court held that the panel should have been prepared as per the un-amended Rules. The findings of the Supreme Court are:

“9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade-II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

14. This decision of the Supreme Court had been considered in the case of **DR. K. RAMULU & ORS. v. DR. S. SURYAPRAKASH RAO & ORS.**, JT 1997(2) SC 80. The Supreme Court in the cited case had held that the concerned person had not acquired any vested right for being considered for promotion in accordance with the repealed Rules. A clear distinction had been drawn where a

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conscious decision had been taken not to fill up the posts till the rules are amended. The Supreme Court held:

"14. It is seen that since the Government have taken a conscious decision not to make any appointment till the amendment of the Rules, Rule 3 of the General Rules is not of any help to the appellant. The ratio in the case of *Ramesh Kumar Choudha & Ors. v. State of M.P. & Ors.*, JT 1996 (9) SC 528 = (1996) 7 SCALE 619] is also not of any help to the respondent. Therein, this Court had pointed out that the panel requires to be made in accordance with the existing Rules and operated upon. There cannot be any dispute on that proposition or direction issued by this Court. As stated earlier, the Government was right in taking a decision not to operate Rule 4 of the General Rules due to their policy decision to amend the Rules. He then relies on paragraph 14 of the unreported judgment of this Court made in *Union of India v. S.S.Uppal & Anr.* JT 1996(1) SC 258 = (1996) 1 Unreported Judgments (SC) 393]. Even that decision is not of any help to him. He then relies upon the judgment of this Court in *Gajraj Singh etc. v. The State Transport Appellate Tribunal & Ors. etc.* JT 1996(8) SC 356 = (1996) 7 SCALE 31] wherein it was held that the existing rights saved by the repealed Act would be considered in accordance with the Rules. The ratio therein is not applicable because the existing Rules do not save any of the rights acquired or accruing under the Rules. On the other hand, this court had pointed out in paragraph 23 thus:

"Whenever an Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of the Parliament as if it had never been passed it, (sic) it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was existing law. Legal fiction is one which is not an actual reality and which the law recognizes and the court accepts as a reality. Therefore, in case of legal fiction the court believes something to exist which in reality does not exist. It is nothing but a presumption of the existence of the state of affairs which in actuality is

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non-existent. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances. Therefore, when Section 217(1) of the Act repealed Act 4 of 1939 w.e.f. July 1, 1989, the law in Act 4 of 1939 in effect came to be non-existent except as regards the transactions, past and closed or save."


15. In this process, the law, therefore, is not a subject matter of controversy. In the case of **Y.V.Rangaiah (supra)**, the Government therein had amended the Rules and applied the amendments without taking any conscious decision in order to fill up the posts pending amendment on the date, the new rules came into force. This was not true in the case of **K. Ramulu (supra)**. Therefore, if the Rules were amended without taking a conscious decision, in that event, with respect to panels that had been prepared for the earlier period i.e. before the amendment, the unamended Rules would hold the field.

16. In the present case, it is obvious from the counter reply and even from the impugned order that they have taken a decision to fill up the post of Assistant Director after the amendment in the Recruitment Rules is effected whereby Section Officers are being made eligible for the same. This is a conscious decision that has been taken and, therefore, the decision of the Supreme Court in the case of **Dr. K.Ramulu & Ors (supra)** would come into play. Resultantly, the applicants as for the present, cannot seek the relief to which we have referred to above.

17. We, however, make it clear that if any such amendment is made, at that stage, the applicants may, in accordance with law take necessary action.



18. Subject to the aforesaid, the Original Application is dismissed.


(S.K. Malhotra)
Member (A)


(V.S. Aggarwal)
Chairman

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