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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2452/2004

Original Application No.2415/2004

New Delhi, this the 19th day of April, 2005

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

O.A.NO.2452/2004:

O.K. Sharma

S/o Late Shri C.S. Sharma

R/o 76E, Pocket 4, Mayur Vihar Phase I
Delhi.

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Applicant

(By Advocate: Sh. L.R.Khatana)

Versus

1. Union of India through
Secretary (R)
Cabinet Secretariat
7, Bikaner House, Annexe,
Shahjahan Road, New Delhi.
2. Secretary
Department of Personnel & Training
Government of India
North Block
New Delhi.
3. Joint Secretary (Pers.)
Cabinet Secretariat
7, Bikaner House Annexe
Shahjahan Road, New Delhi.

... Respondents

(By Advocate: Sh. Madhav Panikar)

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O R D E R (Common)

By Mr. Justice V.S. Aggarwal:

By this common Judgment, we propose to dispose of the aforesaid two Original Applications. As the dispute between the parties and some of the facts even are common, they can conveniently be disposed of together.

2. The applicant is working as Assistant Foreign Language Examiner (for short 'AFLE') since July, 1991 in the Cabinet Secretariat. The post of AFLE belongs to the Language Cadre of Respondent No.1/Department and the composition of the said cadre is as follows:

Name of the Post	Classification	Scale of Pay
Director	Group-A (Gazetted)	Rs. 14300-18300
Deputy Secretary	Group-A (Gazetted)	Rs. 12000-16500
Under Secretary	Group-A (Gazetted)	Rs. 10000-15200
Deputy Foreign Language Examiner (DFLE)	Group-A (Gazetted)	Rs. 8000-13500
Assistant Foreign Language Examiner (AFLE)	Group-A (Gazetted)*	Rs. 8000-13500*
Interpreter	Group-B (Non-Gazetted)	Rs. 6500-10500

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3. Before implementation of Fifth Central Pay Commission's recommendations from 1.1.1996, the post of AFLE was Group 'B' (Gazetted) post. There were 31 posts of AFLE and 11 posts of Deputy Foreign Language Examiner (for short 'DFLE'). The recruitment to the various posts in the Cadre is governed by the Research and Analysis Wing (Recruitment, Cadre & Service) Rules, 1975, as amended from time to time. After the implementation of the recommendations of Fifth Central Pay Commission, the posts of DFLE and AFLE have become identical. They have been classified as Group 'A' Gazetted having same scale, to which we have referred to above. The next higher post is of Under Secretary (Language) and it can be filled up from ALFE and DFLE with 5 years of residency period. Before coming into force of Research and Analysis Wing (Recruitment, Cadre & Service) VIIIth Amendment Rules, 2001, the Rules provided that the post of Under Secretary (Language) would be filled up 50% by promotion from DFLEs and 50% by promotion from AFLEs. The minimum length of service prescribed for eligibility was 5 years in case of DFLE and 8 years in the case of AFLE. The basis of promotion in the case of **DFLE** was '**seniority cum fitness**' whereas in the case of **AFLE** was '**selection**'. The Rules further provided that if the posts in the quota of one stream remained unfilled due to non-availability of eligible candidates, the promotion could be effected from the other stream.

4. After the implementation of the Fifth Central Pay Commission's recommendation, the post of Under Secretary (Language) could be filled up by five years residency period for both the channels. After the

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amendment of the Rules in the year 2001, it provided the quota in the ratio of 60 : 40 for AFLE and DFLE.

5. Applicant's contention in **OA No.2452/2004** is that the actual ratio of AFLE and DFLE comes to 74 : 26 and, therefore, the excess quota has been given to DFLE. By virtue of the said application, the applicant seeks to quash the said ratio of 60 : 40 between AFLE and DFLE for promotion to the post of Under Secretary to be discriminatory and arbitrary.

6. In **O.A.No.2415/2004**, the applicant seeks a direction to the respondents to place the relevant records relating to the existence of the five vacancies prior to May 2001, and that the post should be filled up in accordance with the old Rules that were applicable in the year 2001. The applicant pleads that he is working as AFLE since July 1991. He became eligible for promotion to the next post of Under Secretary after completion of 8 years service in the feeder cadre. Before the amendment of the Rules in the year 2001, there were 5 vacancies in the grade of Under Secretary (Language) which could be filled up as per the then prevailing Recruitment Rules. It is further pleaded that the respondents did not do so. According to the applicant, they must fill up as per the existing Recruitment Rules, if the vacancies arose. Hence, the above said reliefs are being claimed.

7. Both the Original Applications are being contested.

8. In OA 2452/2004, the basic facts were not disputed. Respondents plead that the matter had been taken up with Department of Personnel & Training (for short 'DoP&T'). It had replied that percentage of promotion to the post of Under Secretary (Language) could

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be filled up from DFLE and AFLE. There were 11 and 31 posts of DFLE and AFLE respectively. The amendment was approved and the percentage has been fixed. According to the respondents, it is not arbitrary. It is, however, added that both the abovesaid posts are Group 'A' (Gazetted) having identical scales. The post of DFLE is filled up by direct recruitment while the post of AFLE is filled up by promotion of Interpreters.

9. In OA 2415/2004, the respondents plead that in order to bring the Cadre Rules in conformity with the revised guidelines of DoP&T, a proposal seeking amendment to the Recruitment Rules was sent to the DoP&T in 1999. The DoP&T made amendment, prescribing percentage of quota for filling up the post of Under Secretary (Language) from two different grades of DFLE and AFLE. After examination, the Department did not agree to the modification. It was intimated to the DoP&T that apart from Language Cadre, several other Technically Oriented Cadres are placed in the similar situation. Therefore, appropriate modification to the existing percentage for promotion to the post of Under Secretary (Language) in the Language Cadre was considered and examined. The DoP&T replied that percentage of promotion should be revised. As regards note below the rule providing enabling provision for diversion of posts from one quota to another quota, the DoP&T did not agree for continuance of this enabling provision stating that this tantamount to permanent relaxation. The amendment was accordingly effected. The respondents further plead that it was incumbent on the Department to follow the proposed recruitment rules after initiation of the proposal. It is denied, therefore, that the application is without merit.

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10. We have heard the parties' counsel and have seen the relevant records.

11. As noted above, there is a little controversy so far as the facts relating to amendment is concerned. In OA 2452/2004, the basic contention raised is that after the amendment, the numbers of posts of AFLE are 31 and DFLE are 11. They are discharging the same duties and are in the same scale but DFLEs have been given 40% quota in promotion to the next post of Under Secretary (Language). According to the applicant, it is discriminatory.

12. We know from the decision of the Supreme Court in the case of **UNION OF INDIA AND OTHERS v. S.L. DUTTA AND ANOTHERS**, (1991) 1 SCC 505 that chances of promotion are not conditions of service and it would not be a right, unless it is arbitrary or mala fide, that has been taken. The Supreme Court held:

"14. In connection with the question as to whether the conditions of service of respondent 1 could be said to be adversely affected by the change in the promotional policy, our attention was drawn by learned Additional Solicitor General to the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni. There it was held by a bench comprising three learned Judges of this Court that mere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, chances of promotion are not. (See SCCp.141, para 16.). Reference was also made to the decision of this Court in K. Jagadeesan v. Union of India [(1990) 2 SCC 228], where the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni was followed.

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13. Similarly in the case of **SYED KHALID RIZVI & ORS. v. UNION OF INDIA & ORS.**, JT 1992 (Suppl.) S.C. 169, the Supreme Court reiterated the well settled principle that no employee has a right to promotion but he has only a right to be considered in accordance with the Rules. In other words, the Rules as such can be amended.

14. More recently, the Supreme Court in the case of **DWARKA PRASAD AND OTHERS v. UNION OF INDIA AND OTHERS**, (2003) 6 SCC 535, somewhat similar argument was raised, was negated and it was held:

“23. This contention also is unacceptable. As has been pointed out, in Group ‘B’ posts POs have two channels of promotion; 100% to the post of Superintendent (Group ‘B’) and 20% for the post of Appraiser, EOs have only one channel of promotion with quota of 75% for promotion to Group ‘B’ posts. Thus the holders of the two posts constitute two distinct classes with different conditions of service and nature of duties. It is open to the promoting authority to treat them differently in the matter of providing avenues of promotion to Group ‘B’ posts. In the case of State of Rajasthan v. Rajendra Kumar Godika (SCC at p. 167, para 17) this Court relied and quoted with approval the following passage from Constitutional Law by Prof. Willis and repelled similar contention on grievance of discrimination:

“Mathematical nicety and perfect equality are not required. Similarly, not identity of treatment is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis.”

24. Article 14 and 16 of the Constitution of India cannot be pressed into service to

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describe the fixation of lower quota for POs as discriminatory. It is well established in law that the right to be considered for promotion on fair and equal basis without discrimination may be claimed as a legal and a fundamental right under Articles 14 & 16 of the Constitution but chances of promotion as such cannot be claimed as of right (see Ramchandra Shankar Deodhar vs. State of Maharashtra, AIR para 12, at p.267). The decision relied on behalf of the appellants in the case of All India Federation of Central Excise v. Union of India is of little assistance to the appellants' case. In that case, this Court had considered the proposals made by the Department for re-fixation of quota to redress the grievance of the petitioners to some extent. In the other case between the same parties reported in All India Federation of Central Excise v. Union of India the Court could not be persuaded to issue any direction for alteration of the quota fixed. None of the two decisions therefore is helpful in supporting the contention advanced on behalf of the appellants."

15. Identical is the position herein. We find nothing arbitrary or discriminatory tainted with malice that the said amendment should be disallowed. Merely because if both are in the same scale, does not imply that they must get same or higher percentage of promotional avenues. The number of feeder cadre posts can only be one of the factors but not a tilting factor. The respondents can take a decision keeping in view their experience of the nature of working of the persons and thereafter fill up the promotional posts. It is, therefore, basically the administrative department, which decides the said controversy. We find, therefore, that element of bias is totally absent. In fact, the posts of DFLEs are filled up by direct recruitment and the posts of AFLEs are filled up by promotion. Therefore, at this stage, there is no equity amongst them. If the Department feels that they get higher number of posts keeping in view

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the lower number in the feeder cadre per se will not become discriminatory. The said contention must be rejected.

16. Reverting back to the other contention, the position in law once again is not a subject matter of controversy. In the case of **Y.V.RANGAIAH & ORS. v. J. SRINIVASA RAO & ORS.**, (1983) 3 SCC 284, the Supreme Court was consigned 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. There were certain amendments that had been affecting the promotional chances of 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 in this regard 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."

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17. Subsequently, in the case of **B.L.GUPTA AND ANOTHER** v. **MUNICIPAL CORPORATION OF DELHI**, (1998) 9 SCC 223, the Supreme Court held that amendment to the Recruitment Rules would be prospective and the vacancies which would arise before the amendment should be filled up according to the old rules. The facts were that there were statutory rules, which were framed in the year 1978. They dealt with the question of promotion to various posts in the respondents' organisation. For the post of Assistant Accountant, there were two feeder posts – one was of Senior Clerk and the other was Junior Clerk. No examination was held for years. Some ad hoc arrangement was made. The Municipal Corporation of Delhi stating that the concerned persons were holding only current duties, passed a resolution. The Supreme Court held:

“9. When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had arisen earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Mr. Mehta to a decision of this Court in the case of *N.T. Devin Katti v. Karnataka Public Service Commission* [(1990) 3 SCC 157]. In that case after referring to the earlier decisions in the cases of *Y.V.Rangaiah v. J.Sreenivasa Rao*, *P.Ganeshwar Rao v. State of A.P.* [1989 SCC (L&S) 123] and *A.A.Calton v. Director of Education* [(1983) 3 SCC 33] it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules. Though the High Court has referred to these judgments, but for the reasons which are not easily decipherable its applicability was only restricted to 79 and not 171 vacancies, which admittedly existed. This



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being the correct legal position, the High Court ought to have directed the respondent to declare the results for 171 posts of Assistant Accountants and not 79 which it had done."

18. Therefore, the principle that is obvious from the above said position would be that the posts that fall vacant should be filled as per the then prevalent Recruitment Rules. However, if there is a conscious decision that has been taken not to fill up the posts till the amendment is effected, in that event, it can be filled up in accordance with the amended Rules.

19. In the present case, the respondents plead that there were certain posts of Under Secretary (Language) for DFLE who had just joined departments. They can only become eligible after five years. As per Rules, it was considered proper for diverting the posts of DFLE quota to AFLE quota. The competent authority recommended the case and a proposal was sent to DoPT on 9.11.2000 for filling up the said post. In the meantime, Recruitment Rules were amended in the year 2001.


20. Taking the facts, as pleaded in the short affidavit that has been filed, and also in the reply filed in detail, it is obvious that no conscious decision had been taken not to fill up the posts of Under Secretary (Language) in accordance with the then prevalent Recruitment Rules. The amendment was effected in the year 2001. If there was no DFLE available in accordance with the Recruitment Rules, it could be diverted to the other channel as per the old Rules.

21. Resultantly, the applicant rightly claims that the said post could only be filled up as per the old Rules that were prevalent.

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22. For these reasons, though we dismiss the OA 2452/2004 but allow the OA 2415/2004. It is directed that the posts of Under Secretary (Language), which were vacant before the amendment of the Rules in May, 2001, the same should be filled up as per the un-amended Rules.


(S.K.Naik)
Member (A)


(V.S.Aggarwal)
Chairman

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