

Central Administrative Tribunal, Principal Bench,
New Delhi.

OA-1061/2004
MA-881/2004

(X)

New Delhi this the 15th day of September, 2004.

Hon'ble Shri V.K. Majotra, Vice-Chairman(A)
Hon'ble Shri Shanker Raju, Member(J)

1. Central Secretariat Non-Gazette
Employees Union (Regd.)
through General Secretary Bhim Chand
2338, Kali Masjid, Delhi.
2. Surinder Kumar,
Promote Assistant,
Sector-5/855, R.K. Puram,
New Delhi.
3. M.K. Kaushik,
H.No. 400, Shiv Colony,
Rewari-123401.
4. Mir Singh,
Village and Post Office Jat
(Khalilpur) Tehsil and District
Riwari-123401.
5. Dalip Singh,
D-195, Moti Bagh,
New Delhi-110021.
6. R. Meena,
WZ-82 Palam Village,
New Delhi.

Applicants

(through Sh. Surinder Singh, Advocate)

Versus

Union of India through
Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
(Department of Personnel & Training),
New Delhi-110001.

Respondents

(through Sh. K.R. Sachdeva, Advocate)

O R D E R



Hon'ble Shri Shanker Raju, Member(J)

Applicant (an association comprising of LDCs/ UDCs and promotee Assistants) through this OA has sought re-examination of the Brahma Committee Report, which resulted in passing an order dated 6.1.2004 whereby the promotion quota for the select list of 2004, for promotion to the post of UDCs of CSS and through LDC, has been reduced from 50% to 25%.

2. Learned counsel of the applicant Sh. Surinder Singh contends that earlier to reconstructing of Central Secretariat Service and CSCS were undertaken to meet rampant stagnation where the promotion for LDC to UDC was made to 60:40 and by this restructuring of 1989, the ratio was brought to 50:50. Brahma Committee was set up to provide prospects of promotional avenues whereas by changing the mode of appointment/promotion in CSS grade overseeing the stagnation of LDC/UDC and promotee Assistants, condition of service and chances of promotion have been varied to their disadvantage without according them an opportunity.

3. According to Shri Singh, prior to the change of appointment existing rules would have been continued till cadre is vested to be or option could have been sought from the affected parties.

4. Shri Surinder Singh further states that the final report of Brahma Committee is not as per the reference whereas it was to assess the magnitude of stagnation in the grade of Assistant of CSS but the mode of appointment has been changed. This has adversely affected the strength of LDCs and UDCs.

5. It is lastly stated that despite writing of the Ministry of State to keep the order dated 6.1.2004 in abeyance, the respondents have not considered the cases. This, according to Sh. Singh is violative of Articles 14 and 16 of the Constitution of India.

6

6. Whereas Shri K.R. Sachdeva, learned counsel for respondents at the outset contends that in a judicial review it does not lie within the jurisdiction of the Tribunal to interfere with the policy decision.

7. It is stated that as one time exception resulted vacancies of Assistant of CSS arising from the cadre structuring will be filled from UDCs by way of 50% through LDCE and 50% by seniority and accordingly order has been issued on 6.1.2004.

8. Learned counsel states that the decision of Government is in the best interest of service as the talented cadre through SSC along with experienced promotee officers on seniority-cum-fitness quota should be available as the cadre strength and mode of recruitment for the post of Assistant has been approved by the Government, the claim of the applicants cannot be countenanced.

9. Learned counsel states that direct recruitment in the grade of LDC in CSS and SO in CSS has been discontinued. The only avenue of direct recruitment is at the level of Assistant with a view to infuse young meritorious direct recruits. It is ensured that for the existing workload of LDC and UDC of CSS, 75% quota against direct recruitment has been provided and in future the same would be applied.

10. As regards promotional avenues of existing LDCs and UDCs, it is stated that the same has been taken care by way of promotion of employees belonging to CSSE against 40% falling vacant in the grade of Assistant has resulted of restructuring exercise.

11. Learned counsel states that re-examination of report of the Committee is not reasonable. Direct recruitment in the LDC and SO has been discontinued. Any reduction in cadre strength of Assistant will adversely affect the smooth functioning of CSS as the posts of LDCs and UDCs are going to be abolished. Reduction in the direct recruitment would affect the hierarchy of CSS. Review would be undertaken in the strength of various grades of CSS after three years.

12. There is no rejoinder to the counter filed by the respondents.

13. It is no more res integra in the light of decision of Apex Court in *Grid Corporation of Orissa and Others Vs. Rasanand Das* [(2004 SCC (L&S)214)] where it is held that the service conditions of an employee cannot be altered to its disadvantage.

14. The Apex Court in *State of Tripura and Others Vs. K.K. Roy* [(2004 SCC (L&S) 651)] has held that right to promotion being condition of service, avenues have to be provided.

15. It is also held in *Rajasthan High Court, Jodhpur Vs. Babu Lal Arora* [(2004 SCC (L&S) 706)] that promotion being governed by the condition of employment cannot be regulated by general principles of justice and fair play.

16. In *Technical Employees' Association of Railways and Another Vs. Ministry of Railways and Others* [(2000(9)SCC 412)] where higher qualifications have been prescribed depriving a cadre of further promotion, the following observations have been made:-

“The petitioner's contention is that Khalasi who are already in service, did not possess the aforesaid qualification and if such a circular is allowed to operate, there will be stagnation and, therefore, the impugned circular be quashed being hit by Articles 14 and 16 of the Constitution of India. Prescribing higher qualification for the purpose of promotion whether permissible under law no longer remains res integra. As early as in the case of **Union of India V. S.B. Kohli (Dr)** in a matter relating to the Central Health Service Rules, this Court has held that it would be open for the employer to prescribe qualifications both for direct recruitment as well as for promotion. To the same effect, the judgment of this Court in Mohd. Shujat Ali V. Union of India and the decision of this Court in T.N. Water Supply case. For maintaining efficiency of service, the higher qualification is required for discharge of the duties in the higher positions and therefore, prescribing such qualifications cannot be held to be arbitrary or irrational. In the case in hand, the Board has issued circular in consonance with the recommendation of the Pay Commission. In that view of the matter, we see no infirmity with the impugned circular so as to be interfered with by this Court. The writ petition is accordingly dismissed.”

17. As regards policy decision, the Apex Court in **P.U. Joshi & Ors. Vs. The Accountant General, Ahmedabad & Ors. [I(2003(2)ATJ 624)** held as follows:-

“9. Per contra, on behalf of the Union of India and the Department concerned, it is contended that in the light of the statutory rules made after bifurcation, governing the recruitment to the posts of Assistant Accounts Officers, one should pass the Section officers Grade Examination and possess three years experience in the grade as Section Officers and inasmuch as the appellants and persons similarly placed in other States have not got qualified themselves by passing the SOG Examination, they are ineligible to be considered for promotion as A.A.Os. It is also contended that in the teeth of the rules made under Article 148 of the Constitution of India by the President of India in consultation with the CAG of India duly published on 11.3.1989 effective from 1.4.1987, no reliance can be placed on administrative instruction issued by the Authority of CAG to assert any claim of rights in derogating of the statutory rules. The appellants and persons similarly placed, who opted to remain in the accounts and Entitlement stream, had to conform to the relevant rules applicable and that even as per the instructions relied upon by the appellants themselves, they could not assert successfully their claims. It is contended further for the respondent-Department that the right of the Government to bifurcate departments and suitably restructure them in the interests of better administration and in order to ensure greater efficiency is unquestionable and as long as the appellants do not conform to the revised pattern and satisfy the requirement of the statutory rules governing the service conditions; no grievance of denial of equal opportunity or discrimination could be made, for and behalf of the appellants. So far as the promotional prospects are concerned, it is contended that even Supervisors, whose pay-scale is identical to Section Officers having more than three years of regular service in the cadre of Supervisors, cannot automatically claim for being promoted as A.A.Os. And it is only when they qualify in the SGO Examination they become eligible for consideration and promotion. In challenging the decision of the Cuttack Bench of the CAT, it is strenuously contended that constitution, frame and reconstitution and restructuring of departments, creation and abolition of posts herein are matters of policy depending upon administrative exigencies and exclusively within the discretion of the Government and as such the same could neither be challenged nor the Tribunal could substitute its views to that of the Government, as to how it should be. As to the reasoning based upon the common seniority list, it is contended for the Department that such common seniority list of Supervisors and Section Officers was prepared only for the limited purpose and for the period to facilitate the grant of non-functional selection grade and that inasmuch as Supervisors do not really belong to category of Section Officers.

10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and with in the exclusive discretion and jurisdiction of the State subject of course, to the limitations or restriction envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or

impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by underrating further classification bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

18. As regards policy decision, the Apex Court in *Vijay Lakshmi Vs. Punjab University and Others* [(2004 SCC(L&S)38)] held as follows:-

“7. In the judgment per majority, the High Court after considering the duties which are required to be performed by the Principal of a school observed thus:

“Keeping in view the nature of the duties which are required to be performed by the Principal in relation to the girl students, it cannot be deduced that such students could be subjected to any sort of exploitation. For dealing with the students, the Head of the Department has equal and similar powers as are conferred upon the Principal, which if misused may result in disastrous consequences.”

8. It is difficult to agree to the aforesaid reasoning because as stated above, it is not for the court to sit in appeal against the policy decision taken by the State Government. It is for the State to decide whether such rule is a preventive or precautionary measure so that young fallible students may not be subjected to any sort of exploitation.

(a) For the policy decision of classification, we would straight away refer to the decision rendered by this court in *State of J&K v. Triloki Nath Khosa* wherein the Court [Chandrachud, J, (as he then was), in para 20] succinctly held thus: SCC P.30)

“the challenge, at best, reflects the respondent’s opinion on promotional opportunities in public services and one may assume that if the roles were reversed, respondents would be interested in implementing their point of view. But we cannot sit in appeal over the legislative judgment with a view to finding out whether on a comparative evaluation of rival theories touching the question of promotion, the theory advocated by the respondents is not to be preferred. Classification is primarily for the legislature or for the statutory authority charged with the duty of framing the terms and conditions of service; and if, looked at from the standpoint of the

authority making it, the classification is found to rest on a reasonable basis, it has to be upheld."

It was also observed that discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis and it was for the respondents to establish that classification was unreasonable and bore no rational nexus with its purported object. Further, dealing with the right to equality, the Court (in paras 29 & 30) held thus: (SCC p.33)

"But the concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment.

Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the class."

(b) Now, we would next refer to the decision in **Air India v. Nergesh Meerza** which propounds the right of equality under Article 14 after considering various decisions. In that case, the constitutional validity of Regulation 46(i)(c) of the Air India Employees' Service Regulations was challenged, which provides for retiring age of an air hostess. The Court (in para 39) summarized thus@SCC pp.353-54)

"39. thus, from a detailed analysis and close examination of the cases of this Court staring from 1952 till today, the following propositions emerege:

(1) In considering the fundamental right of equality of opportunity a technical, pedantic or doctrine approach should not be made and the doctrine should not be invoked even if different scales of pay, service terms, leave, etc., are introduced in different or dissimilar posts.

Thus, where the class or categories of service are essentially different in purport and spirit, Article 14 cannot be attracted.

(2) Article 14 forbids hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be achieved so that in such cases Article 14 will be completely out of the way.

(3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

(4) Where equals and unequals are treated differently, Article 14 would have no application.

(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any discrimination or to denial of equality of opportunity.

(6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined:

- (a) the nature, the mode and the manner of recruitment of a particular category from the very start,
- (b) the classifications of the particular category,
- (c) the terms and conditions of service of the members of the category,
- (d) the nature and character of the posts and promotional avenues,
- (e) the special attributes that the particular category possess which are not to be found in other classes, and the like."

9. Apart from various other decisions, the Court referred to Western U.P. Electric Power & Supply Co. Ltd. V. State of U.P. wherein this Court held thus:

"7. Article 14 of the Constitution ensures equality among equals; its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law."

19. If one has regard to the above, mere reduction of avenues of promotion by a decision of the State, which has intelligible differentia and has an object sought to be achieved, cannot be against the principle of equality and equal opportunities under Articles 14 & 16 of the Constitution of India. The only exception is when the action is *mala fide*.



20. It is also not disputed that a policy decision on the basis of finding of Brahma Committee has resulted in issuance of an order dated 6.1.2004 where earlier as per Recruitment Rules the quota for promotion was assigned 50% has been changed to 15 and 10% respectively through promotion of LDCE and 75% has been offered to the direct recruitment. We have not come across any assertion by the respondents' counsel or alteration with the rules in pursuance of changing mode of appointment or recruitment had been amended suitably.

21. **Apex Court in Syed T.A. Naqshbandi and Others Vs. State of Jammu & Kashmir and Others** [(2003 SCC (L&S) 1151)] decided on 9.5.2003 regarding a dispute against quashing of grant of selection to Respondents No. 4 & 8 on the ground that criteria was arbitrary without following the recommendation of Justice J. Shetty Commission, the following observations have been made:-

“Reliance placed upon the recommendation of Justice Jaganatha Shetty Commission or the decision reported in All India Judges’ Assn. V. Union of India or even the resolution of the Full Court of the High Court dated 27-4-2002 is not only inappropriate but a misplaced one and the grievances espoused based on this assumption deserve a mere mention only to be rejected. The conditions of service of members of any service for that matter are governed by statutory rules and orders, lawfully made in the absence of rules to cover the area which has not been specifically covered by such rules, and so long as they are not replaced or amended in the matter known to law, it would be futile for anyone to claim for those existing rules/orders being ignored yielding place to certain policy decisions taken even to alter, amend or modify them. Alive to this indisputable position of law only, this Court observed at SCC p.273, para 38, that :we are aware that it will become necessary for service and other rules to be amended so as to implement this judgment”. Consequently, the High Court could not be found at fault for considering the matters in question in the light of the Jammu and Kashmir Higher Judicial Service Rules, 1983 and the Jammu and Kashmir District and Sessions Judges (Selection Grade Post) Rules, 1968 as well as the criteria formulated by the High Court. Equally, the guidelines laid down by the High Court for the purpose of adjudging the efficiency, merit and integrity of the respective candidates cannot be said to be either arbitrary or irrational or illegal in any manner to warrant the interference of this Court with the same. Even dehors any provision of law specifically enabling the High Courts with such powers in view of Article 235 of the Constitution of India, unless the exercise of power in this regard is shown to violate any other provision of the Constitution of India or any of the existing issue before courts. The grievance of the petitioners, in this regard, has no merit of acceptance.”

(16)

22. If one has regard to the above, it is clear that a policy decision will not have an effect to alter, modify or amend the existing conditions of service which also includes right to consideration for promotion. Accordingly, the rules existing shall cover the area and would be applied without amendment of the Recruitment Rules.

23. Accordingly, we have no hesitation to hold that till the rules are amended, quota for promotion in so far as LDCs, UDCs and promotee Assistants are concerned cannot be altered and their chances of promotion cannot be reduced. To this effect, the matter requires reconsideration. Though we are conscious of the limitation in judicial review and the attempt of the respondents to meet upon avenue of the direct recruitment at the level of Assistant to reduce young meritorious persons in achieving the optimum in maintaining records in computerized work environment. The modern concept and technology has to replace the old one. To do away the posts of LDC and SO and to increase at direct entry level in Assistant cadre reducing the promotional avenues of the respondents may have an object with reasonable nexus but this cannot be done unless the rules are amended. Till then the applicant have a right to be considered for promotion.

24. In the result, for the foregoing reasons, we dispose of this OA with a direction to the respondents to re-examine the matter regarding promotional avenues of the applicants. No costs.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
15.9.04
(V.K. Majotra)
Vice-Chairman(A)

/vv/