

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

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(14)

O.A. No. 527/92.

Date of decision 9/11/92

Shri G. Gururaj & Ors. .. Applicants

Vs.

Union of India & Ors. .. Respondents

Coram:

Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

Hon'ble Member Mr. I.P. Gupta, Member (A)

For the Applicant .. Shri D.C. Vohra, counsel.

For the Respondents .. Shri M.L. Verma, counsel.

(1) Whether Reporters of local papers may be allowed to see the judgement ?

(2) To be referred to the Reporter or not ?

J \_ U \_ D \_ G \_ E \_ M \_ E \_ N \_ T

[Delivered by Hon'ble Shri I.P. Gupta, Member (A)]

In this application filed under Section 19 of the Administrative Tribunal Act, 1985, the applicant has pressed for the relief at para 8(2) of the Application, i.e. a direction should be issued to the respondents to consider the names of the applicant ( five in numbers) for promotion to the post

of Deputy Director General (DDG) as they have completed the qualifying service as provided in the rules 1963 (amended in 1984 and 1986) which were in force prior to 5.11.1990 (when the new rules were promulgated) viz. of Station Director with 7 years regular service in the grade failing which Station Director with 12 years combined regular service in the Station Director and Station Director (Ordinary Grade).

2. The Learned Counsel for the applicant contended that the vacancy or vacancies arose prior to 5.11.1990 when the new rules were promulgated. The applicant had completed the requisite period of service if the subsequent memorandum of the respondents dated 19.7.1989 i.e. prescribing the cut-off date for determining the eligibility as 1st October of the year where the ACRs are written financial year-wise is not imposed on them.

3. The Learned Counsel for the respondents brought out that none of the applicants met the eligibility conditions as on 1st October, 1990 even in terms of the recruitment rules as applicable

prior to 5.11.1990. He added that the recruitment rules prior to 5.11.1990 would not be applicable even for vacancies prior to 5th November, 1990 (as they were framed with reference to the post of Deputy Director General in the lower scale) since the post had been upgraded to a higher scale and the Department of Personnel and Training had issued general instructions revising the eligibility condition for the upgraded post in the senior administrative grade (5900-6700).

4. The Learned Counsel for the applicant drew our attention to the Order dated 1st February, 1991 in O.A. No. 1860/90 by the Principal Bench (Rajendra Prasad v/s UOI) (Annexure F). It was held therein that if there was a conflict between the statutory rules on the one hand and the administrative instructions on the other, the statutory rules would prevail. This was for proving the point that the executive instructions by O.M. dated 8th May 1987 raising the eligibility condition by the number of years could not over-ride the recruitment rules.

5. In this case, however, the issue is different.

(17)

The question is whether the applicant should be bound by the instructions of 1989 regarding eligibility of officers to be considered for promotion by DPC. This Office Memorandum fixes 1st October of the year where ACRs are written financial year-wise as the crucial date for determining the eligibility. Where recruitment rules are silent on a point the executive instructions by the O.M. would certainly prevail. Recruitment Rules did not specify the crucial date with reference to which eligibility was to be determined. The Learned Counsel for the <sup>applicants</sup> ~~respondents~~ contended that the eligibility could be from the date of DPC. Another argument that can be made with equal force is that the eligibility should be on the date the post fell vacant. Yet another argument could be that if the post related to 1990 the eligibility should be the beginning of the year or the end of the year. The respondents have chosen a mid path and fixed 1st October as the cut off date since 1st October is the middle of the financial year and this date is relevant when ACRs are written financial year-wise.

The cut-off date is not arbitrary and is intelligible.

Since the applicant did not <sup>2</sup>met the eligibility condition as on 1st October 1990 even in terms of the

recruitment rules of 1963 (amended in 1984 and 1986),

the application is bereft of any merit. Since the

vacancy was to be filled after the O.M. dated 19.9.89

regarding cut-off date and since this O.M. would apply

even with reference to the rules of 1963 (as amended

in 1984 and 1986), unless a contrary was stated in

the rules, the applicant cannot be given the relief.

It is also not a case where the eligibility service

for promotion in the existing rules was being enhanced

so as to affect adversely some persons. The eligi-

bility service was not being enhanced but the O.M.

of 19.7.1989 only gave a general instruction regard-

ing the reference date for eligibility when no such

reference date was available in the recruitment rules.

6. In the conspectus of the aforesaid facts,

the application is dismissed with no order as to costs.

*I.P. Gupta*  
I.P. Gupta  
Member (A) 9/11/92

*Ram Pal Singh*  
Ram Pal Singh  
Vice-Chairman (J)