

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1678/93

199

DATE OF DECISION 21.07.99.

14

C.S. Direct Recruit Assistants ....Petitioners  
Association through its  
President Sh. V.K. Sinha & Another

Shri K.K. Rai

....Advocate for the  
Petitioner(s)

VERSUS

Union of India through its  
Secretary, DOP & T,  
North Block, New Delhi. ....Respondent

Shri N.S. Mehta

....Advocate for the  
Respondents.

CORAM

The Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)  
The Hon'ble Shri R.K. Ahooja, Member (A)

1. To be referred to the Reporter or not? YES ✓
2. Whether it needs to be circulated to other  
Benches of the Tribunal? No.

CR  
(V. Rajagopala Reddy)  
Vice-Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1678/93

New Delhi this the 21<sup>st</sup> day of July, 1999.

(5)

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)  
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

1. C.S.S. Direct Recruit Assistants' Association through its President Shri V.K. Sinha, 326, C-Wing, Nirman Bhawan, New Delhi-110 011.
2. Shri B. Bandyopadhyay, Section Officer (Ad-hoc), TV (P1) Section, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi-110 001. ...Applicants

(By Advocate Shri K.K. Rai)

-Versus-

Union of India through its Secretary, Department of Personnel and Training, North Block, New Delhi-110001. ...Respondents

(By Advocate Shri N.S. Mehta)

O R D E R

By Reddy. J.-

In this case the Select List dated 28.5.93 is brought under challenge. The applicants, Assistants in Group 'B' are governed by the Central Secretariat Service Rules. The cause of the Assistants Group 'B' working in the Central Secretariat Service (CSS) in the Ministry of Information and Broadcasting is represented by the first applicant, their association. The applicants have been appointed to the posts of Assistant by direct recruitment. By the office memorandum dated 28.5.93 (Annexure A-6) a select list for Section Officers Grade, (Seniority Quota) was issued. The grievance of the applicants is that the select list was not properly prepared as it was contrary

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to the rules and the applicants who are Assistants are not given proper place in the list of Section Officers. It is the contention of the learned counsel for the applicants that as per Rule 13 of the Rules, 40% of the vacancies are to be filled up by way of promotion from amongst the Assistants and those who have rendered not less than 8 years of 'approved' service shall be placed in the select list. The impugned select list ignored the principles of seniority and construed the actual service in the grade of Assistant. It is, therefore, the case of the applicants that junior Assistants have been put in the select list ignoring the meritorious seniors. The learned counsel for the respondents submits that the seniority list has been prepared strictly in accordance with rules, taking into consideration the claims of those Assistants who had rendered eight years of 'approved service' as Assistants. It is the case of the respondents that an Assistant is eligible to be considered and placed in the select list only if he meets the minimum condition of having eight years of 'approved service', i.e., the service rendered from the date on which the individual joined the post as an Assistant.

2. The dispute lies in a short compass. We are now called upon to construe Rule 13 of the CSS Rules. Rule 13 (1) provides that 1/6 of the substantive vacancies in the Section Officers Grade shall be filled up by direct recruitment on the results of the competitive examination. The remaining vacancies shall be filled by the substantive appointment of persons included in the select list for the Section Officers Grade. Rule 13 (5) speaks of the procedure for preparing the select list which shall be according to the fourth schedule of the rules. The fourth

schedule contemplates that only the officers of Assistant grade who have rendered not less than 8 years of 'approved service' and are within the range of seniority shall be put in the select list provided they are not rejected as being unfit. The dispute, therefore, narrows down to in construing what is "approved service".

Rule 2 (c) defines approved service:

"approved service" in relation to any Grade means the period or periods of service in that Grade rendered after selection, according to prescribed procedure for long-term appointment to the Grade, and includes any period or periods during which an officer would have held a duty post in that Grade but for his being on leave or otherwise not being available for holding such post".

3. The 'approved service' therefore, means the period of service rendered after selection or appointment to the grade, which includes the period during which an officer was on leave or otherwise and holding such post. Thus, 'approved service' is the period of service rendered after selection. That means the period from the date of actual joining in the service. A person cannot render service before he joined the post after the necessary selection. Before joining service even after selection, one cannot be called as rendering any service. Thus, an Assistant is eligible for selection as Section Officer only if he has rendered eight years of service after he joined the service as Assistant. Sometimes, an anomaly may arise when a person selected later may join earlier than the person selected earlier. He may be senior to those who have joined later. But, while considering the question of construction of the rules, we cannot completely ignore the plain meaning of the words used in

the rules to obviate the rigor of the rules in any particular case. It is contended by the learned counsel for the applicants that subsequent to the impugned select list, the rules have been amended by the notification dated 21.6.95 whereunder the definition of the 'approved service' has been modified. A cut off date has been fixed, i.e., from the first day of July of the year, following the year in which the examination for direct recruitment was held, for the purpose of construing the period of 'approved service'. It may be true that in view of the rigor of the rules the Govt. itself thought fit to modify the definition of "approved service", subsequent to the impugned order, but the applicants are not entitled to the benefit of the amendment. The subsequent act of the Government cannot be a ground to enlarge the definition of the approved service. The respondents have properly followed the relevant rules and it cannot be said that the impugned select list suffers from any infirmity.

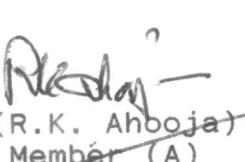
4. The applicants have not questioned the vires of Rule 13 of the CSS Rules. The CSS Rules are statutory rules and the rule making authority is empowered to frame rules, laying down conditions of eligibility for promotion to higher post. It is not permissible for this court to give <sup>enlarged</sup> meaning in order to bring the ineligible persons within its fold. The learned counsel for the applicant cited 1988 (8) ATC 63 P. Prabha Devi & Others vs. Govt. of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms & Others in support of his contention that persons who have been selected earlier have to be considered for promotion in preference to their juniors taking their service from the date of selection rather than from the date of joining the service. We do

(J.S.A)

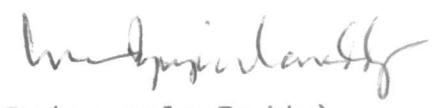
not find any assistance for the proposition of the learned counsel. In this case Rule 12 (2) of the CSS Rules, 1962, as amended in 1994 was held to be not ultra vires of Articles 14 and 16. It was held that when qualifications for a particular post or cadre are prescribed the same have to be satisfied first before a person is considered for that post. When eligibility conditions for promotion have been laid down by the service rules those conditions have to be complied with. The rule was challenged on the ground that it prescribed minimum length of service equally for direct recruits as well as promotees and it cannot, therefore, be said as arbitrary or violative of the Articles 14 or 16 of the Constitution. The decision in 1985 (2) SCC - 468 H.V. Pardasani & Ors. vs. Union of India is also not applicable to the facts of the case and, therefore, we do not propose to examine the <sup>in detail</sup> same. In that case the rule for determination of rota-quota in the grade of Section Officer was held valid.

5. It is next contended that this is a fit case where the harshness and rigour of the CSS Rules ought to have been relaxed by the Government in favour of the Assistants. It is true that the Government has got the power to relax the rules whenever the rules appear to be causing hardship in a particular case. But this question is not before us. It is open to the applicants to approach the Government under the relevant rules for the appropriate relief. We do not express any opinion in this regard.

6. In view of the foregoing discussion the OA fails and is accordingly dismissed.

  
(R.K. Aboja)  
Member (A)

'San.'

  
(V. Rajagopala Reddy)  
Vice-Chairman (J)