

CENTRAL ADMINISTRATIVE TRIBUNAL, ALIAHABAD BENCH
ALIAHABAD

T.A.No.996 of 1986.

K.P.SinhaApplicant/petitioner.

Versus

Union of India & others.....Respondents.

Hon'ble Mr.Justice U.C.Srivastava,V.C.

Hon'ble Mr.K.Obayya,A.M.

(By Hon'ble Mr.Justice U.C.Srivastava,V.C.)

The applicant, who entered the National Sugar Institute in the year 1957 and after intervening promotions, was promoted as Junior Technical Officer (Sugar Technology) on Class II Gazetted post and he was confirmed in the year 1966 on the said post. The next higher posts in the regular cadre at Sugar Institute are Assistant Professor of Sugar Technology/ Senior Technical Officer (Sugar Technology)/Senior Research Officer (Gur and Khandsari). All these posts are in the same pay scale and the persons holding the post of Junior Technical Officer (Sugar Technology) and others eligible are appointed on the aforesaid higher posts on selection through the Union Public Service Commission. An advertisement dated 16.7.83 was published for filling one post of Assistant Professor of Sugar Technology/ Senior Technical Officer (Sugar Technology)/Senior Research Officer (Gur and Khandsari) in the pay scale of 1100-1600. The maximum age limit for the aforesaid post was not exceeding 45 years . The applicant also applied for the same

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and the interview for the aforesaid post was held on 7.11.83 by the Union Public Service Commission. Thereafter a panel was prepared in which Shri Usman Ahmad was selected and a panel/reserve list was prepared for filling up future vacancies. It is noted that the life of panel, drawn by the Departmental Promotion Committee normally is valid for one year and it ceases to be valid on expiry of one year and six months or when a fresh list is prepared whichever is earlier as has been provided in O.M.No.22011/6/75-ESTT (D) dated 30.12.76 issued from the Department of Personnel and Administrative Reforms, New Delhi. According to the applicant, his name was included in the said panel. When the panel was still in existence, another vacancy for the post of Senior Technical Officer (Sugar Technology) came into existence on 31.3.84 because of retirement of Shri P.N.Gangoli. This vacancy had arisen within the period of less than five months of the previous interview which was held on 7.11.83. The said Gangoli was appointed as Senior Technical Officer (Sugar Technology) on 25th July, 1979 when he was about 53 years of age. The applicant made a representation in this behalf and approached the Union Public Service Commission that one more name of the panel (reserve list) may be sent to the Ministry of Food and Civil Supplies, Department of Food for appointment and he also approached the Government of India by way of representation.

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in this behalf and certain other representations also followed by him but appointment was not given to the applicant but a fresh advertisement was published on 28.4.84 for filling up one post of Senior Technical Officer(Sugar Technology)/Assistant Professor of Sugar Technology/Senior Research Officer(Gur and Khandsari) in the same pay scale of 1100-1600/-. The earlier interview was held on 7.11.83 i.e. within a period of one year. The applicant has challenged this advertisement dated 28.4.84 as a consequence of which for the first time, the age was reduced for Government servants for appointment to the post of Senior Technical Officer(Sugar Technology)/Assistant Professor of Sugar Technology/Senior Research Officer(Gur and Khandsari)for National Sugar Institute.

2. The respondents have pointed out that the recruitment rules to the aforesaid posts have been amended vide GSR dated 18.2.84 published in the Gazette of India Part II, Section 3, Sub-section(1) of 3rd March, 1984 to amend Column 6 of the previous Recruitment Rules and the amended provisions came into force. The amended Rule contains the provision in regard to age as under:-

"Not exceeding 45 years (relaxable for Government servant by five years in accordance with the instructions or orders, issued by the Central Government).

Note- the crucial date for determining the age limit shall be the closing to

for receipt of applications from candidates in India."

3. Regarding reserve list, the respondents have not disclosed it but it has been stated that the reserve list is distinct from waiting-list and the waiting list ^{was} of the candidates ~~was~~ found suitable for appointment and the same are identical posts and the reserve list is operative subject to specific guidelines and the guidelines had to be reviewed in December, 1983 and consequent upon the recruitment rules had not been amended with regard to fixation of upper age limit of the Government Servants. It is in dispute that the operation of such reserve list was limited to provide for only replacement of vacancies and the vacancies arise as a result of the candidates recommended by the Commission not granting the post for one reason or the other. It has not been stated that the advertisement dated 28.4.84 was issued in accordance with recruitment rules as amended from 1980 to 1984. It has not been stated anywhere that there was waiting list followed by the reserve list and the applicant's name appeared in the reserve list but before him there were two more persons in the waiting list and the waiting list preceeded the reserve list and as per case of the applicant, it appears that he was the next person who could have got the appointment in place of said

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Gangoli but his appointment was not made in his place. The simple question that now remains for determination in this case is as to whether the list was prepared for a period of one year and it was valid for a period of one year. It was in respect of vacancies which occurred within a period of one year and in this case, the vacancies occurred within a period of one year and the Gangoli's vacancy occurred when the new recruitment rules came into force and as such this post should have been filled in accordance with old rules and not in accordance with new rules. Reference has been made to the case of 'Y.V. Rangaiah Vs. J. Sreenivasa Rao' (AIR 1983 S.C. 852) in which similar question arose relating to recruitment by promotion. The question was whether promotion should be made in accordance with the rules, in force on the date the vacancies occurred or in accordance with the amended rules. The Supreme Court observed that

"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 Statewise 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."

4. Similarly in the case of N.T. Bevin Katti Vs. Karnataka Public Service Commission and others AIR

1990 Supreme Court 1233, this aspect was considered and in that case, advertisement was issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or Government Orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and Government Orders. The Supreme Court observed that

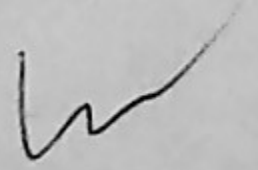
"where the proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and Government orders and any amendment of the rules or the Government order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended rules or the amended Government orders issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections."

5. In the case of 'P. Ganeshwar Rao Vs. State of Andhra Pradesh' AIR 1988 Supp. SCC 740, it was held that the ^{vacancies, occurred prior to} ~~the~~ amended rules, is not effected by the amendment and the same would be governed by the old rules. The vacancies which occurred prior to the amended rules, would be governed by the old rules and not by the amended rules.

6. It is settled position of law that an

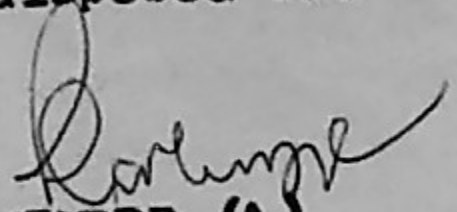
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amendment in service rules can be with retrospective effect but it cannot defeat the rights which have already been vested and a particular person has got a right for being considered for appointment on promotional post under old rules notwithstanding the fact that the amendment has been made and it cannot be denied on the said consideration. In the instant case, the consideration on the promotional post has been denied to the applicant before coming into force the new rules. We have gone through the new rules and we do not find anywhere in the new amended rules that it has in any way retrospective effect or it effects the selection or vacancies. occurred. Accordingly, the case of the applicant may be considered by the respondents for the promotional post on the existing vacancies within a period of two months from the date of communication of this order. In case, his name was in panel and there was no other person in the waiting list or other panel, the respondents are directed to consider the case of the applicant and in case he was the next person in the panel or the next person in the waiting list or reserve list, as the case may be, he may be given a notional appointment w.e.f the date he should have been appointed during the pendency of the said panel. (The applicant has now retired from service). This we have directed, rejecting the plea which has been taken by the respondents that the reserve list is a confidential list and



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and the same is not to be published. When the result has been published, there is nothing confidential. With these observations, the application stands disposed of. No order as to costs.


MEMBER (A)


VICE CHAIRMAN.

DATED: AUGUST 17, 1992.

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