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THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

T.A. No 241/87

O.P. Khare

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Applicant

Vs.

Union of India & others

Respondents

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

~~Hon. Mr. K. Obayya, A.M.~~-----

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

The applicant is a member of the subordinate Accounts Service - Civil (Ordinary Branch) which has been classified as Central Civil Service - Class III, Ministerial-Non-Gazetted vide Rule 4(2) of the Indian Audit and Accounts Department (Subordinate Accounts Service and Subordinate Railway Audit Service) Service Rule, 1974. He filed a writ petition before High Court which has been transferred to this Tribunal by operation of law, in which he has prayed for quashing the order passed by the Accountant General, U.P. dated 11.9.1984 placing the junior Section Officers ~~xxxxxxx~~ in the higher post of selection grade and also prayed for issue of a writ of mandamus to the Accountant General for promoting the senior Section Officer in the scale of Rs. 775-1000 pay scale with retrospective effect from ^{due} the date so as to give them placement ~~where~~ their junior colleagues. He also prayed that the Accountant General of the State may be restrained from making further promotion of junior officers to the selection grade on the basis of their having crossed 3/4 span in the original grade.

2. After bifurcation of office of Accountant General U.P. w.e.f. 1.3.1984 into Accounts and Audit Offices, the applicant was posted under the Accountant General U.P.-I(A&E) as he was junior in service as Section Officer compared to the seniors who were allocated to the Audit Offices. Against 29 posts of Selection Grade, the Accountant General vide office order dated 11.9.1984, appointed 23 Section Officers as Selection Grade Section Officers in the scale of Rs, 775-35-880-40-1000 on the consideration that they have crossed 3/4th span of the scale of pay of the ordinary grade (Rs. 500-900) though the criteria adopted for the same is not stated in the office order dated 11.9.1974. In the said office order, only ~~the~~ ^{the} criteria ~~were~~ ^{was} laid down is 14 years of service or crossing of 3/4th span of the scale of pay of the ordinary grade (Rs. 500-900) for promotion to selection grade in the Section Officers cadre. As only 23 Section Officers (who were junior in service to many of the Section Officers in the gradation list) had crossed 3/4th span of scale of pay in the ordinary grade of Rs. 500-900 on 1.3.1984 have been given this grade. The main plea of the applicant that although the junior Section Officers in comparison to the seniors who were eligible for promotion in the higher grade of Section Officer in the scale of Rs, 775-1000 as they had crossed 3/4th span in the ordinary grade of Rs. 500-900 were not entitled for promotion ignoring the claim of the seniors in view of Accountant General's Circular dated 19.9.1979 which reads as follows :-

"For becoming eligible to be considered for appointment to the Selection Grade, an employee should have completed 14 years

service in the Section Officers grade or crossed 3/4th span of the ordinary grade. In this process if a junior person becomes eligible by virtue of his having reached 3/4th span of the revised scale in the ordinary grade, while a person senior to him does not become eligible the junior will not get any over-riding priority in the matter of consideration for appointment to Selection Grade."

This was also reiterated in the C.A.G's endorsement dated 20.3.80 wherein it was said that appointment to the selection grade on or after 30.12.77 should be on the basis of seniority subject to the rejection of the unfit. Where, however, no appointments to the Selection Grade have been made till 30.12.77 and appointments are to be made after this date they should invariably be made on the basis of seniority subject to rejection of the unfit. The President of India has accorded sanction to the introduction of Selection Grade in the scale of Rs. 775-1000 for Section Officers (Group 'C') in I.A. & A.D. which was conveyed in Circular No. 1063-NGE/IV/55-77 dated 19.9.79, Para 2 of the same reads as under :-

"In terms of the instructions contained in Ministry of Finance O.M. No.F(21)E-III(A)/74 dated 10.1.77 as amended from time to time read with their present sanction the following terms and conditions will govern the Selection Grade in the Section Officers cadre :

(i) the strength of Selection Grade will be 10% of the posts which have been in existence for three years irrespective of the fact whether the posts are permanent or temporary.

(ii) For becoming eligible to ^{be} considered for appointment to the Selection Grade an employee should have completed 14 years of service in the Section Officer's grade or crossed 3/4th span of the scale of pay of the ordinary grade. In this process if a junior person becomes eligible by virtue of his having reached 3/4th span of the revised scale in the ordinary grade, while a person senior to him does not become eligible, the junior will not get any over-riding priority in the matter of consideration for appointment to Selection Grade."

The respondents who have pleaded that Selection Grade in group 'C' and 'D' cadre was sanctioned with the sanction of President of India under the Government of India, Ministry of Finance, Department of Expenditure's Office Memo No.7(2)/E-III(A)/74 dated 10.1.77 as the recommendations of 3th Pay Commission, have placed reliance in office memorandum dated 13.2.1980, circulated by the Ministry of Home Affairs (Department of Personnel & Administrative Reforms) Government of India dated 20th March, 1980. The said notification refers to above, specifically states that any Officer who has crossed 3/4th span of the revised scale of pay of the ordinary grade will be eligible for the grant of Selection Grade even if he does not fulfil the length of service conditions. According to the said Circular, the Officer whose pay in the ordinary grade has under any circumstances, crossed the stage in the time scale of ordinary grade of the 3/4th span will become eligible. The seniority will thus be in relation to the panel which was made on the basis of para 3 of the aforesaid

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Office Memorandum dated 13.2.80 which provides for a panel to be prepared of eligible Section Officers on the basis of 14 years service or 3/4th span of ordinary grade irrespective of the position in the seniority list. This was further clarified under Comptroller & Auditor General's Office Circular dated 29th October, 1980. The said Circular reads as follows :-

"IX/II-269:- Introduction of Selection Grade in Group 'C' & 'D' Cadre- Clarification regarding.

Ministries/Departments are aware that selection grades are to be introduced wherever possible in accordance with the general introduction issued by the Ministry of Finance (Deptt. of Expenditure) in the O.M No.7(21)E.III/74 dated 10.1.77 and their subsequent office memorandum number 7(61).E.III(A)/77.

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Consequently it is not necessary to maintain a separate seniority list of officers appointed to the selection grade created under Ministry of Finance's order dated 10.1.77, nor is it considered necessary to frame separate recruitment rules for such selection grade posts."

Thus, according to the respondents the selection grade in the scale of Rs. 775-1000 of Section Officers was introduced vide C.& A.G's Circular dated 19.9.79 and the provision for juniors will not be given over-riding benefit was superseded vide Govt. of India's Memorandum dated 13.2.1980 which provides that a panel of Section Officers for promotion to the Selection Grade will be prepared. The eligible Section Officers in the

panel are to be appointed as Selection Grade Officers on the basis of the seniority subject to the rejection of unfit. Thus, the main question that arises for consideration is as to whether the notification of 1979 which has been ^{issued with} the Presidential sanction who awarded the sanction to the introduction of selection grade in terms of the said notification of 1979 extracted above, will still hold good in view of the clarification which was given by the Ministry of Personnel O.M. dated 13.2.1980.

The heading of the C.A.G.'s Circular dated 19.9.79 and that of Memo. dated 20.3.80, is the same but for the additional - 'clarification regarding' in the latter. The notification dated 13.2.80 nowhere states ^{it} ~~is~~ has Presidential sanction. No reference to the earlier notification which ~~has~~ been issued by the President in the year 1977 or to the notification issued by C&A.G.'s Circular dated 19.9.1979 finds place therein and no clarification with reference to the same has been given.

The Presidential notification can be changed, varied or modified only by another Presidential notification and not by any other executive instructions or memorandum which have no Presidential sanction. For implementing a particular rule or notification, classification without varying the subject matter or affecting any interest or rights but in the name of clarification, the criteria prescribed can not be changed or varied. The clarification even if it is effective can not ^{have} ~~in~~ affect whose favour, certain rights have accrued under a rule or notification having Presidential sanction.

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A memorandum issued in the name of President of India would be under Article 77 of the Constitution of India and not under Article 309 of the Constitution of India as such it would be in the nature of Administrative instructions. It is to be varied, it can be done in the like manner, but if rights have accrued under a particular instructions, it can be taken away only if power to do so with retrospective effect can be exercised. That power can be exercised by President of India but not by any other Executive Authority or department or other constitutional functionary in the name of clarification of memorandum having Presidential sanction.

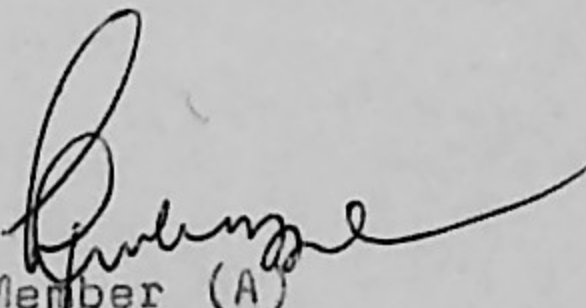
We gave opportunity to the Learned Counsel for the Union of India to explain and produce the record. Even after adjournment, the record could not be produced as it was not made available only a copy of telegram stating that various orders issued by the Ministries have the force of Presidential order. In imperative of the fact that the same is not issued in the name of President and that Law Ministry is being consulted, no document has been produced. What happened thereafter, no statement could be given from the side of respondent.

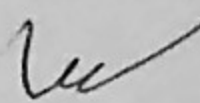
Thus, in any event a clarification can only clearly state what is not clear, but it can not change the mode and extent of promotion or seniority for which criteria and guide-lines have been laid down in Executive instructions having Presidential sanction even by a constitutional functionary and that too with retrospective effect. The subsequent clarification will be only in the nature of Executive instructions with prospective effect without

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any encroachment on rights or avenues accrued or necessarily to accrue under instruction in existence subsequent to issuance of another instructions.

In this view the applicant's promotional chance and position of seniority was governed by the instructions of 1979 referred to above and the O.A. deserves to be allowed. Accordingly, the order dated 11.9.84 placing junior Section Officers ~~xxxxxxx~~ ~~xxxxxxxx~~ in the higher post of Selection Grade is quashed and a mandamus is issued directing the respondent No.2 to promote the senior Section Officers, and particularly the applicant, in the scale of Rs. 775-1000 who would have been so promoted under the O.M. of 1979 (No. 1063 - NGE/IV/55-77 dated 19.9.79) with retrospective effect without considering the O.M. of 1980 (No. 22 011/5/77-ECH(D) dated 13.2.80). The respondents are directed to do so within 3 months from the date of communication of this order and to ^{revis} ~~raise~~ the seniority list accordingly. No order as to be costs.


Member (A)


Vice-Chairman

Allahabad 31.8.92
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