

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 1094 OF 1996

Present : Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mr. M.L.Chauhan, Judicial Member

1. Ranjit Kumar Sarkar,
Jr. Technical Assistant,
(Geology) , G.S.I, Calcutta
2. Nand Kishore Singh,
Jr. Tech. Asst. (Geology),
G.S.I, Calcutta
3. Haran Chandra Sarder,
Jr. Tech. Assistant (Geology),
G.S.I, Calcutta

VS

1. Union of India through the
Secretary, M/o Mines,
Shastri Bhavan, New Delhi
2. Director General, GSI,
27, Jawaharlal Nehru Road,
Calcutta-16
3. Dy. Director General (Personnel),
G.S.I, 4, Chowringhee Lane,
Calcutta-16
4. Director (Personnel),
G.S.I. 4, Chowringhee Lane,
Calcutta-16
5. Smt. Rama Roy (Rudra),
Sr. Technical Asst. (Geology),
GSI, Calcutta-16
... respondents

For the applicants : Mr. P.K.Munshi, Counsel

For the Off. respondents : Mrs. K.Banerjee, Counsel

Heard on : 17.5.2002 : Order on : 29.5.2002

O R D E R

M.L.Chauhan, J.M.:

Through this OA, the applicants, who are working as Junior Technical Assistants (JTA) (Geology) in the Geological Survey of India, Calcutta, have approached this Tribunal claiming inter alia the following reliefs :-

i) Amend/modify the Notification being Annexure-A2 incorporating "Rules of 1989" herein in so far as it seeks to lay an educational qualification of B.Sc. in Geology as necessary for upgradation (promotion) from Jr. Technical Assistant (Geol.) to Sr. Technical Asst. (Geol.)

ii) Declare the petitioners Nos. 1 & 2 upgraded (promoted) as Sr. Tech./ Asst. (Geol) in the pay scale of Rs. 1640-2900/- (RP) and designated as Sr. Tech. Asst. (Geol.) w.e.f. 6.1.92, 23.4.92 and the petitioner No. 3 to be eligible for upgradation (promotion) as such w.e.f. 25.9.97, if not earlier, for all intents and purposes inclusive of all pay and allowances with arrears thereof.

2. The applicants were initially appointed under the respondents as Laboratory Attendant/Museum Attendant/Operator etc. Applicant No. 1 joined the Department on 12.1.73 and his educational qualification was School Final Passed whereas applicants 2 and 3 were appointed on 18.5.63 and 19.7.75 respectively and both possessed the educational qualification of Secondary School Examination passed Certificate. They were promoted to the post of Jr. Technical Assistant (JTA) (Geology) in the scale of Rs. 1400-2300/- on 6.1.87, 23.4.87 and 25.9.92 respectively. The next channel of promotion from the post of Jr. Technical Assistant was to the post of Sr. Technical Assistant (STA) (Geology) in the scale of Rs. 1640-2900/-. Appointment/promotion to the post of Sr. Technical Assistant(Geology) is governed by the recruitment rules of 1989, a copy of which has been annexed as annexure-A2 to this OA. Prior to 1989, appointment/promotion to the said post of Sr. Technical Assistant (Geology) was governed by the recruitment rules 1968, which was subsequently amended vide notification dated 10.10.80 vide Annexure-D and finally it was amended in the year 1989.

3. Prior to coming into force of 1989 Rules, there was no educational qualification prescribed for promotion to the post of Sr. Technical Asst. (Geology) from the feeder cadre of Jr. Technical Assistant (Geology) and the method of recruitment was that 80% of the posts were required to be filled in by direct recruitment and the remaining 20% posts were meant for promotees, who had put in five years regular service as Jr. Technical Asst. (Geology). According to the 1989 Rules, the method of recruitment was changed and Jr.

Technical Assistants (Geology) with five years regular service in the grade and possessing B.Sc degree in Geology from a recognised University or Institute, were made eligible for promotion to the post of Sr. Technical Asst. (Geology) and further that the quota of 20% meant for promotees was reduced to 10% only.

4. The case of the applicants is that they were eligible to get promotion to the post of Sr. Technical Assistants (Geology) according to the earlier rules and were legitimately expecting such promotion. But by the amended rules of 1989, their scope of promotion has been taken away by introducing the qualification of possessing degree in Geology. Applicant No. 1 made a representation to the respondent authorities for granting him promotion to the post of Sr. TA vide representation dated 17.4.95 which was rejected on 24.5.95 (annexure-A1) on the ground that his case for promotion to the post of Sr. Technical Assistant could not be considered as per provision of the recruitment rules. Applicant No. 1 made a further representation on 15.5.96 (annexure-B) thereby praying that his promotion to the post of Sr.TA may be expedited as he belonged to SC community.

5. It is the further grievance of the applicants that their case for promotion to the post of Sr. Technical Assistant by relaxing the educational qualification has not been considered by the authorities even though sufficient number of vacancies were available. It has been averred that the respondents authorities have wrongly promoted respondent No. 5 to the post of Sr. Technical Assistant vide order dated 8.9.93, who happens to be junior to applicants 1 and 2, as will be evident from the gradation list of Jr. Technical Assistants (annexure-C) but who fortunately possessed a degree in Geology. It has been averred that prior to 1989 Rules, there was no embargo laid down for promotion to the post of Sr. Technical Asstts. from the feeder cadre of Jr. Technical Asst. so far as educational qualification was concerned and that persons with similar qualifications like the applicants, have already got promotion and working as Sr. Technical Asstt in their respective streams.

Therefore, denial of such promotion to the applicants is violative of article 14 and 16 of the Constitution. It is on these facts that the present application has been filed thereby praying for the reliefs stated above.

6. The respondents have filed a reply affidavit thereby contending that the application is hopelessly barred by time. It has been further contended that the promotion of respondent No. 5 was rightly given as she fulfilled the requisite qualification as per recruitment rules of 1989 whereas the applicants, who did not possess the requisite qualification of B.Sc degree in Geology, have been rightly ignored for such promotion.

7. We have heard the ld. counsel for the parties and have perused the documents placed on record.

8. Mr. P.K.Munshi, ld. counsel for the applicants submits that the case of the applicants is fully covered by the judgement of the Chandigarh Bench of the Tribunal in the case of M.M.Dutta -vs- UOI & ors, OA No. 594-HR of 1992 decided on 23.1.2001. A copy of the said decision has been produced before us. In that case, the Chandigarh Bench has directed the respondent authorities to consider the case of the applicant therein for promotion to the post of Sr. Technical Assistant in relaxation of the Rules. Mr. Munshi submits that since the applicants of the present OA are similarly placed like the applicant of the case before the Chandigarh Bench, similar benefit of relaxation of rules should also be extended to them.

9. Ld. counsel for the respondents, on the other hand, has contended that the decision of the Chandigarh Bench is not applicable to the present case inasmuch as the applicant before the Chandigarh Bench was appointed as Jr. Technical Assistant on 1.4.84 and he completed 5 years service before the coming into force of the 1989 rules, which were notified on 7.7.89. It is, therefore, apparent that the applicant was eligible to be promoted as Sr. Technical Asst. before coming into force of the 1989 Rules. But the present applicants 1 and 2 were appointed as Jr. Technical Asst. on 6.1.87

and 23.4.87 respectively and as such they did not complete 5 years regular service as JTA before 7.7.89 when the 1989 Rules came into force. So far as applicant No. 3 is concerned, he was not even appointed as JTA prior 7.7.89 and he was appointed as JT0 only on 25.9.92. Therefore, the applicants herein are not similarly situated like the applicant before the Chandigarh Bench. She has further contended that it is the prerogative of the Govt. to amend the recruitment rules or to prescribe higher educational qualification for a particular post for the administrative interest and efficiency. Therefore, the applicants cannot challenge the amended rules or prescription of qualification of B.Sc degree in Geology for promotion to the post of STA.

10. We have given our anxious consideration to the rival contentions and have gone through the judgement of the Chandigarh Bench referred to above.

11. In the case before the Chandigarh Bench, there was only one applicant, who was the seniormost Jr. Technical Assistant (Geology). As already pointed out above, he was eligible for promotion to the post of Sr. Technical Asst. (Geology) prior to the coming into force of the 1989 Rules by having rendered 5 years regular service. According to the old rules, there was no educational qualification for such promotion. Therefore, the applicant claimed such benefit which was rejected by the respondents. Noticing that as per rule 5 of the 1989 Rules, there was provision for relaxation, the Tribunal directed the authorities to consider the case of the applicant in relaxation of rules, if possible, considering the facts and circumstances of that case.

12. The case of the applicants herein is totally different. They did not acquire eligibility before coming into force of 1989 Rules. It is the admitted position that as per the new rules, they were not eligible for promotion to the post of Sr.TA as they did not possess the requisite educational qualification. It is also admitted that respondent No. 5 did possess such qualification and hence her case was

considered and she was given promotion to the post STA even though she was junior to the applicants 1 and 2.

13. It is now well settled that Government has the authority to fix particular qualification for a particular post in the recruitment rules in the interest of administrative efficiency. Therefore, the challenge of the applicants to the amendend rules made under Art. 309 of the Constitution cannot be sustained. It is, however, not disputed by the ld. counsel for the applicants that the Govt. has the power to fix higher educational qualification for promotion or direct recruitment to a particular post.

14. The ld. counsel for the applicants has submitted that when the Chandigarh Bench of the Tribunal directed relaxation of rules in favour of the applicant before it, the present applicants, being similarly situated, should also be granted similar benefits by directing the respondent authorities to consider their promotion by relaxation of rules.

15. As already pointed out earlier, the present applicants are not similarly situated like the applicant before the Chandigarh Bench. Applicant Nos. 1 and 2 did not complete 5 years regular as JTO service before the coming into force of the 1989 Rules whereas applicant No. 3 was not even appointed as JTO prior to 1989. From the decision of the Chandigarh Bench it is not clear as to whether there was qualified candidate available for promotion to the post of STO. In the case before us, respondent No. 5 was a qualified candidate as per recruitment rules and hence her case was considered and she was promoted to the post of STO. Thus, the question whether despite availability of qualified candidates for promotion to the post of STO, the Tribunal can direct the respondent authorities to relax rules so far as qualification was concerned in favour of a particular candidate, was not considered by the Chandigarh Bench. Moreover, the vacancy position is also not clear. It is to be noticed that the quota for promotees as per 1989 rules was reduced to 10% only.

W.L. Therefore, it is not clear whether promotee quota is available even

after giving promotion to the qualified candidates.

16. In this context we may refer to the recent decision of the Delhi High Court in the case of K.S.Mathew & Ors -vs- Govt. of NCT, Delhi & Ors reported in 2002(1) AISLJ 229. In that case the petitioners, who did not possess the educational qualification as per recruitment rules, were given promotion by relaxing rules while ignoring other available qualified candidates. The Principal Bench of the Tribunal held that power of relaxation included in the recruitment rules was not meant to be exercised in such a manner so as to throw over board the substantive provisions in the rules prescribing the essential technical educational qualifications for the promotion post. The Tribunal came to the conclusion that the action of the respondent, authorities to resort to the power of relaxation appeared to be unreasonable and that no relaxation should be granted when qualified persons were available. It was further held that if the Govt. wanted, then it could have changed the qualifications by amending the rules.

Hon'ble Delhi High Court while upholding the decision of the Principal Bench held that power of relaxation had neither been exercised for the purpose of mitigating hardship nor to meet the public interest as other candidates, who were qualified were available for consideration for promotion. In arriving at such conclusion, the Hon'ble High Court relied on a number of decisions of the Hon'ble Apex Court viz., Ahmedabad Municipal Corporation -vs- Virendra Kumar Jayanthibhai Patel, (1997) 6 SCC 650, N.K.Durga Devi -vs- Commissioner of Commercial Taxes, Hyderabad, (1997) 11 SCC 91, M.Venkateswarlu & Ors -vs- Govt. of A.P. & ors, (1996) 5 SCC 167, State of Orissa & Ors -vs- Sukanti Mohapatra & ors, (1993) 2 SCC 486.

In those cases, it has been held by the Apex Court that it is settled law that the Government cannot relax the basic qualifications but in an individual case they can relax, in an appropriate circumstance, the conditions of service. It has also been held that in the name of relaxation, the Govt. is not empowered to throw the

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rules over board, otherwise it would violate Article 14 of the Constitution. It is further held that the recruitment rules made under Art. 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and bypassing of the PSC are permitted, it will open a back door for illegal recruitment without limit.

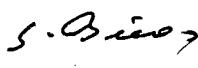
It is now well settled that no employee has a right to promotion but he has only the right to be considered for promotion, if he fulfils the eligibility condition in accordance with the recruitment rules. The conditions prescribed in the recruitment rules for being eligible for consideration for promotion are not relaxable. Further, it is settled law that want of basic qualification cannot be compensated by experience. In another decision the Apex Court has held that a person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post.

17. In view of the above legal position, we are of the opinion, that when the applicants are not eligible as per recruitment rules, they cannot claim promotion to the post of STA as a matter of right and that relaxation of rules is in the domain of the Govt. and this Tribunal will not be justified in directing the respondents to relax rules in favour of the applicants, especially when they lack basic educational qualification for the promotion post and when eligible candidate was available.

18. In the result, the application fails. It is dismissed without any order as to costs.


(M.L. CHAUHAN)

MEMBER(J)


(S. BISWAS)

MEMBER(A)