

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCHM.A. No.433 of 1997
O.A. No.1298 of 1996

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. B. P. Singh, Administrative Member

Dr. Surendra Prosad Srivastava
s/o of late Rajeswar Lal, residing at
EB Block, Flat No.63, Salt Lake City,
Calcutta-700 064 and working as Investigator
(Language) in the office of the Dy.Registrar
General of India (Language), Language Division
Nizam Palace, Calcutta-700 020

... Applicant

VS

1. Union of India service through the Secretary to the Govt. of India, Ministry of Home Affairs New Delhi
2. The Registrar General of India, Kotah House Annex, 2A, Mansingh Road, New Delhi-110 011
3. The Deputy Registrar General of India (Language), Language Division, 17th Floor, Nizam Palace, Calcutta-700 020
4. Secretary to the Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110 011

.... Respondents

For the Applicant : Mr. R.K. De, counsel

For the Respondents: Mr. S.K. Dutta, counsel

Heard on 23.12.1998 : : Date of order: 02-1-1999

O R D E RD. Purkayastha, JM

Applicant, Dr. S.P. Srivastava has sought the following reliefs in this application :

(a) to quash the recruitment rules regulating the method of recruitment to the post of Linguist from the post of Investigators in the office of the Registrar General of India and ex-officio Census Commissioner for India published vide notification No.4/13/81-Ad.I(Ad.II) dated 26th June, 1989 on the ground that 50% of the quota as provided in the said recruitment rules for promotion of Investigators is illegal and arbitrary and

detrimental to the interest of the staff of Calcutta office; and

(b) to consider the candidature of the applicant for the post of Linguist as per advertisement made by the U.P.S.C. in their advertisement dated 12.10.96 for filling up the said post from the open market.

2. The applicant's case, in short, is that he had been holding the post of Sr. Technical Assistant (Language) since July, 1974. At present he is holding the post of Investigator (Language Division), Calcutta. According to the applicant, the post of Investigator (Language) is the feeder grade for promotion to the post of Research Officer (L)/Linguist as per the recruitment rules notified on 26th June, 1989. According to Col.11 of the recruitment rules 50% of the posts may be filled up by promotion and rest 50% by direct recruitment and age limit for direct recruitment has been fixed as not exceeding 35 years (relaxable for Government servants upto 5 years). The applicant has already exceeded the age limit as Investigator in that organisation for the purpose of direct recruitment in the cadre of Research Officer (L)/Linguist as per recruitment rules. Consequently he has been deprived of chance given for the direct recruitment inspite of his sincere service and past experience gained by him by working in different projects for 17 years in the office. It is alleged that in the recruitment rules of A.D.C.O.(T) the provision has been made for 75% promotion from the post of Investigator and the same is true in respect of social studies unit also whereas in case of framing recruitment rules for the post of Research Officer (L)/Linguist, promotion is to be effected from the post of Investigator (L) by 50% only and thereby the recruitment rules for the post of Research Officer (L)/Linguist issued vide notification dated 26th June, 1989 is arbitrary, illegal and contrary to the principle of natural justice. Having such grievance from the recruitment rules the applicant made representation to the authority on 4th September,

1990 (Annexure/A1 to the application) for the purpose of consideration of his candidature for promotion to the post of Research Officer (L)/Linguist by making necessary provision for 75% in Column 11 of the recruitment rules as stated above. It is also stated that in the said recruitment rules of 1989 it was indicated that there are six posts of Research Officer (Language) Linguist of which 50% have to be made available to the departmental candidates by way of promotion and this means that only three posts could be made available to the Investigator who had already put in 15 years service and thereby the percentage of 50% for promotion quota has been fixed arbitrarily resulting adverse discrimination to the applicant. It is also alleged that the U.P.S.C. has issued notification for the recruitment to the post of Research Officer(L)/Linguist vide notification dated 12.10.96(Annexure/A4) ignoring his representation dated 4.9.90. Thereby it is apprehended by the applicant that his representation would not be properly considered by the respondents in view of the decision to go in for direct recruitment from open market by advertisement dated 12.10.96 and the applicant is now above 52 years. So, his chance of application for direct recruitment is also restricted by age limit of 35 years and the applicant is fully eligible for making application to the UPSC, if his age is relaxed and accordingly he made a representation on 16.10.96 to the UPSC through proper channel for consideration of his candidature, Annexure/A5 to the application. But his representation has not yet been considered by the respondents and hence he has filed this application seeking the reliefs as mentioned above.

3. The respondents filed written reply denying the claim of the applicant and it is stated that the recruitment rules for each post are framed in accordance with the job requirement and has no relation with other posts in the same division or in other divisions and prior to 1989, the recruitment rules were prepared

for the post of linguist in 1966, the posts of Research Officers were created subsequently under a plan scheme. Since the duties and responsibilities attached to the post of Linguist and Research Officers were similar it was decided by the competent authorities to frame common recruitment rules for both the posts by clubbing them and the recruitment rules for the post of Research Officers (L)/Linguist were framed and notified in the year 1989. It is also stated that the post of Research Officer (L)/Linguist is the entry level for Group 'A' in the discipline of language for the office of Registrar General of India and as in the case of other Group 'A' entry level post the direct recruitment is desirable for inducting linguistic talents from Research Institute and Universities to have a mixture of dynamism and experience and, as such, 100% promotion is not envisaged in any first level Group 'A' post and exception cannot be made in this case and the administration is the best judge how the quota should be fixed for direct recruitment and promotees. The percentage of 50 : 50 has been prescribed after proper study of the requirements of the organisation at this level and the recruitment rules of 1989 were made in supersession of the earlier recruitment rules for the post of linguist after making necessary notification in the same and it is also stated that there cannot be any increase in the quota for promotion to suit any individual requirements. It is also stated that the age for direct recruitment prescribed in the existing recruitment rules of 1989 for the Research Officer (L)/Linguist is not exceeding 35 years and the said recruitment rules further provides relaxation of age limit for the Government servant upto five years. So, advertisement made by the UPSC is for direct recruitment from the open market which falls under the quota of direct recruitment and there is no wrong in the said advertisement. So, the application is devoid of merit and liable to be dismissed.

4. Mr.R. K. De, learned advocate appearing on behalf of

the applicant strenuously argued before us stating interalia that the applicant was never appointed as Sr. Technical Assistant (Language). Mr. De submits that the applicant was initially appointed as Investigator (Language) in the organisation and he was never appointed as Sr. Technical Assistant, but the respondents wrongly treated him as Sr. Technical Assistant(L) and he submits that by notification dated 18.4.94 the post of Sr. Technical Assistant and Investigator having the same pay scale were redesignated as Investigator with effect from 18.4.94 and according to the applicant, the said recruitment rules framed in the year of 1989 for regulating the method of recruitment for the post of Research Officer(L)/Linguist in the organisation of Calcutta prescribing the quota of 50:50 is arbitrary, illegal and violative of principle of natural justice and without considering the hardship of the departmental candidates for the purpose of promotion to the post of Research Officer (L)/Linguist in view of the facts that the recruitment for the post of ADCO(T) and the case of Social Studies Unit 75% quota has been provided for promotion and 25% has been provided for direct recruitment and there is no reason to make a quota of 50:50 in the recruitment rules of 1989 ignoring the recruitment rules of ADCO(T) for promotion from the post of Investigator. So the respondents should be directed to raise the quota for promotion to the post of Research Officer(L)/Linguist by enhancing the quota from 50% to 75% in column No.11 of the recruitment rules. Mr. De also strongly relied on the judgment of Govind Dattatray Kelkar and others vs. Chief Controller of Imports and Exports and others, reported in AIR 1967 SC 839 and submits that the ratio for the recruitment to the post in the organisation should not be unreasonable as it amounts to discrimination and the Court can struck it down and as such enhancement of the quota is not found unreasonable.

5. Mr. Dutta, learned advocate appearing on behalf of the

respondents submits that the applicant should not have any grievance in this case since he was not entitled to be recruited against the direct recruitment rules as he was found overaged on the date of advertisement made by the UPSC for the purpose of recruitment to the post of Research Officer(L)/Linguist and he submits that the fixation of the quota in the recruitment rules from different channels is a policy decision of the Government basing on the job requirement and the strength of the posts and that policy decision cannot be challenged by the applicant for his own interest unless it is shown that the said policy decision made by the authority is malafide. So, the case of the applicant is devoid of merit and liable to be dismissed and Mr. Dutta relied on the judgment reported in 1989(9) ATC 251 (Girish Sahai and others vs. Union of India and others) where the Division Bench of the CAT, Principal Bench, New Delhi held that Government has power to amend the recruitment rules and amendment is valid even if it reduces the chances of promotion of some employees and there is no guarantee that rules which are applicable at the time of appointment must continue and amendment can only be declared invalid, if it is contrary to employees' fundamental rights or constitutional rights. And Mr. Dutta submits that the case of the applicant is ^{now} ~~not~~ under consideration for promotion to the post of Research Officer (L)/Linguist in the present vacancy occurred and the applicant would be promoted to the promotional quota if he is found suitable by the DPC as per rules.

6. In view of the aforesaid submissions and divergent arguments advanced by both the parties we have to see whether the recruitment rules framed in 1989 can be said ~~not~~ to be violative of Art. 14 of the Constitution on the basis of the allegation made by the applicant in his application. In column 11 of the Recruitment Rules the following entries have been made viz., (i) 50% by promotion failing which by transfer on deputation (including short-term contract) and failing both by direct

recruitment; and (ii) 50% by direct recruitment. It is stated by the respondents that quota has been fixed according to job requirements and hence for the purpose of making some recruitment from the open market according to exigencies of the service some provision has been made and the applicant has no right to claim enhancement of quota of promotion from 50% to 75% under the existing job requirements. So, in view of the aforesaid circumstances it cannot be said that the chances of promotion of departmental candidates was ignored by the respondents and the quota of 50% according to job requirements and exigencies of service has been fixed, ^{and} ~~but~~ it is found that the applicant does not come within the purview of 50% quota fixed for promotees for departmental candidates since all the posts fall within the quota of promotion were filled up by the respondents according to the seniority. In the instant case the applicant has no grievance about the seniority of the persons who are appointed by promotion from the feeder posts to the posts of Research Officer(L)/Linguist after framing of the recruitment rules. It is true that normally the recruitment rules cannot be challenged for the individual interest of the employees. There should be common interest of general employees. On a perusal of the documents and submissions made by the learned advocate of both the parties we are not satisfied at all that the applicant has been able to show that his fundamental rights guaranteed under Arts.14 and 16 of the Constitution has been violated by framing the recruitment rules of 1989 for the purpose of recruitment to the post of Research Officer(L)/Linguist. It is ^{equally} ~~clearly~~ true that the rule making authority is to decide which quota should be provided for direct recruits and which quota should be provided for the promotees according to job requirements. So, the job requirements cannot be decided by the Court. It falls within the ambit of executive authority for smooth running of the administration for their own exigency of service. Hence we are

unable to hold that the said recruitment rule of 1989 as challenged by the applicant in this case claiming enhancement of the promotional quota from 50% to 75% is arbitrary or violative of Arts.14 and 16 of the Constitution. The grievance of the applicant as we find from the submission, is that his representation in regard to the enhancement of the quota from 50% to 75% was not taken into consideration before the advertisement made by the UPSC for filling up the post of Research Officer(L)/Linguist by advertisement dated 12.10.90. It is the admitted fact that the applicant has become overaged as per recruitment rules and he has no right to apply for the post meant for direct recruit under the said advertisement since he was found overaged on the date of advertisement as per recruitment rules. Since the applicant was found overaged, for that purpose the recruitment rules cannot be amended for individual interest. And we find that the said advertisement was made in accordance with the recruitment rules for the purpose of direct recruitment from the open market. So, we are of the view that the applicant has not been in any way prejudiced for the purpose of recruitment by way of advertisement from the open market and the applicant's case does not fall within the ambit of Arts.14 and 16 of the Constitution. But on the face of the submission of Mr. Dutta, learned advocate regarding consideration of the case of the applicant for the purpose of promotion under departmental quota we find that there is a vacancy in the category of Research Officer (L)/Linguist and the applicant's case is under ^{affirm} consideration. That submission is verified by the letter dated 8th July, 1996 written by the Deputy Inspector General(L) to the Registrar General of India (Annexure/A2 to the application) and since the matter of promotion of the applicant is under consideration of the Department or authority concerned, thereby we have no hesitation to dismiss the application with the observation that the applicant's case should be considered by the

respondents for the purpose of promotion to the post of Research Officer (L)/Linguist in accordance with the rules.

6. In view of our discussions made in the foregoing paragraphs we hope that the applicant's case would be considered fairly by the respondents and with this observation we dismiss this application awarding no costs. MA 433/97 is also stands disposed of.

B. P. Singh

(B. P. Singh) 27/2/99

MEMBER (A)

D. Purkayastha

(D. Purkayastha) 27/2/99

MEMBER (J)