

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 459/05

WEDNESDAY this the 21st day of June, 2006

CORAM

HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

C.S.Giri, aged 50 years

S/o late C.S.Sankara Narayan Pillai

Stenographer

Regional Vocational Training Institute for Women,
Kazhakootam, Trivandrum
residing at Sribhuvaneswari

No.MNRA-8, Near Govt.Guest House, Avanavancheri,
Attingal PO, Trivandrum District.Applicant

(By Advocate Mr. T.C.Govindaswamy)

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- 1 Union of India, represented by the
Secretary to the Govt. of India,
Ministry of Labour, New Delhi.
- 2 The Director General of Employment & Training,
Ministry of Labour, Govt. of India,
Shram Shakti Bhavan, Rafi Marg,
New Delhi.1.
- 3 The Director of Training (WO)
Directorate General of Employment & Training,
Ministry of Labour, Shram Shakti Bhavan,
Rafi Marg, New Delhi.1.
- 4 The Regional Director,
Regional Directorate of Apprenticeship Training,
Guindy, Chennai.32.
- 5 The Principal,
Regional Vocational Training Institute for Women,
Kazhakkootam,Trivandrum.695582.Respondents

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(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 2.6.2006, the Tribunal on 21.6.2006 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant is a Stenographer working in the office of the 5th respondent, namely, the Principal, Regional Vocational Training Institute, Kazhakoottam, Trivandrum. According to the Directorate of Training (Vocational Training Programme for Women Group 'C' Non Gazetted Ministerial) Posts Recruitment Rules, 1995 "Stenographers (Grade III) with 12 years of service rendered after appointment thereto on a regular basis in the unit having at least five years experience in establishment housekeeping work" was one of the grades from which promotion or deputation or transfer was to be made to the next promotional post of Office Superintendent. One post of Office Superintendent fell vacant in the office of the 5th Respondent with effect from 1.4.2001 and another post fell vacant in the Regional Vocational Training Institute for Women at Bangalore with effect from 30.4.2001. One Smt. Kamalabai in the Bangalore office was promoted as Office Superintendent on ad hoc basis and retained therein. The applicant was promoted as Office Superintendent on ad hoc basis vide Annexure.A3 order dated 26.3.2002 and retained in the office of the 5th Respondent. According to the Annexure.A3 order his promotion to the post of

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Office Superintendent was on ad hoc basis for a period of three months, pending regular promotion of the eligible employees. It was stated in the said order that his ad hoc promotion was subject to such rules, regulations as may be in force and amended from time to time. The said appointment was extended twice for a period of three months each and after the expiry of nine months, no further extension was granted. According to the applicant, he was under the bonafide belief that he would be considered for regular promotion in accordance with the Recruitment Rules in force and continued his promotion on ad hoc basis as against the post of Office Superintendent fell vacant on 1.4.2001.

2 However, against the expectations of the applicant, the Respondent No.1 ie., the Secretary to Government of India in the Ministry of Labour, New Delhi vide Annexure.A4 letter dated 9/18.7.2003 intimated the various Institutes that "according to the revised Recruitment Rules for the post of Office Superintendent, which is likely to be notified shortly, 25% of the vacant posts is required to be filled up by promotion and remaining 75% is required to be filled by Transfer on deputation." This was followed by Annexure.A5 notification dated 29.10.2003 which has been impugned in the present OA, proposing to fill up six posts of Office Superintendents including the one in the office of the 5th Respondent in the scale of pay of Rs. 5500-9000 on deputation basis. In the said notification the post of Stenographers were excluded from the list of

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eligible officers for submitting applications. The applicant made Annexure A6 representation dated 1.12.2003 stating that the post of Office Superintendent fell vacant after 1.1.96 should be filled by promotion as per the pre-revised Recruitment Rules. He has submitted that since the vacancy in the post of Office Superintendent in the 5th Respondent Institute has arisen before framing the revised Recruitment Rules with effect from 1.4.2001, he should also be considered for promotion to the post of Office Superintendent as per the pre-revised Recruitment Rules. The main ground adduced by the applicant in this OA is based on the dictum laid down by the Hon'ble Supreme Court of India in the case of **N.T.Devin Katti and others Vs. Karnataka Public Service Commission and others, (1990) SCC (L&S) 446** wherein it has been held as under:

"....Lest there be any confusion , we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant Rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of Rules during the pendency of selection unless the amended rules are retrospective in nature."

In the aforesaid judgment the Hon'ble Supreme Court has considered its earlier judgment in **Y.V.Rangaiah V. J.Sreenivasa Rao, (1983) 3 SCC 284** wherein the court has observed as under:

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"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."

The aforesaid view was taken by the Apex Court in the cases of **P.Ganeswar Rao Vs. State of Andhra Pradesh, (1988) Sup.SCC 740, A.A.Calton V. Director of Education, (1983) 3 SCC 33** and **P.Mahendran V. State of Karnataka, (1990) 1 SCC 411** also. In the case of P.Ganeswar Rao (supra) and A.A.Calton (supra) the Supreme Court has laid down the principle that statutory rule or government order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Similarly in the case of P.Mahendran (supra) it has been held that the amended rules or amended government orders issued in exercise of the statutory rule either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections only. The Applicant also relied upon the judgment of this Tribunal in **OA 866/02 etc., P.C.Mathen and others Vs. Union of India and others** wherein the principle "old vacancies, old rules" has been followed.

3 The respondents in their reply have submitted that the post of Office Superintendent in the office of the 5th respondent and similarly placed Institutes were earlier governed by the Directorate of Training (Vocational Training Programme for Women) Group 'C' Non-Gazetted Ministerial Posts Recruitment Rules, 1995, according to which the said post was a General Central Services Group 'C' Non-Gazetted Ministerial Post in the scale of pay of Rs. 1600-50-2300-EB-60-2660. The 5th Central Pay Commission in para 46.11 of its report recommended for the up-gradation of the post as Group 'B' (Non-Gazetted) in the scale of pay of Rs. 5500-9000 with effect from 1.1.96. The said recommendation was accepted by the Government of India and notified in Part B of the Ministry of Finance Notification dated 30.9.97. As a result of the up-gradation recommended by the Central Pay Commission and accepted by the Government of India, the amendment to the earlier Recruitment Rules of 1995 was necessitated. Accordingly, the revised Directorate of Training (Vocational Training Programme for Women) Office Superintendent Group B Non-Gazetted (Ministerial) posts Recruitment Rules, 2003 has been made. In the said Recruitment Rules, unlike the 1995 Recruitment rules, the post of Junior Hindi Translator and Stenographer Grade III were excluded from the feeder grade for promotion to the post of Office Superintendent. While the Recruitment Rule was under process of amendment, the post of Office Superintendent in the office of the 5th Respondent fell vacant

on 1.4.01 on account of superannuation of the incumbent one Shri N.Parameswaran. The respondents, therefore, on pending finalization of the said proposed amendment to the Recruitment Rules, filled up the said vacancy by promoting the Applicant on ad hoc basis vide Annexure.A3 order dated 26.3.2002 making it clear that the said appointment was on ad hoc basis for a period of three months from the date he reports for duty pending regular promotion of eligible employees on the condition that the said ad hoc promotion is subject to such Rules, regulations as may be in force and amended from time to time. When the Recruitment Rules have been finally amended and notified on 8.11.2003, only the Accountants with six years regular service were made eligible for promotion to the post of Office Superintendent. On the basis of this amended Recruitment Rules the respondents have issued the Annexure.A4 letter dated 9/18.7.2003 informing the Principals of the Institutes concerned to furnish the details of the vacancy position in the post of Office Superintendent to fill up the same in accordance with the revised Recruitment Rules. This was followed by Annexure.A5 notification proposing to fill up the six posts of Office Superintendents including the one in the office of the 5th respondent, against which the applicant has a claim. The respondents have refuted the contention of the applicant that they are filling the vacancies against the law laid down by the Apex Court in the case of **N.T.Devin Katti and others Vs. Karnataka Public Service**



Commission and others, (1990) SCC (L&S) 446. They have also denied the contention of the applicant that the post came to be treated as Group B only with effect from 8.11.2003 ie., the date of publication of the new rule. According to them as per the DOPT notification No.13012/1/98-Estt.(D) dated 20.4.98 (R5) on classification of Central Civil Posts, the post carrying a pay or pay scale with a maximum of not less than Rs. 9000/- but less than Rs.13500/- was notified as Group B with effect from the date of publication of the said notification. Therefore the post of Office Superintendent at RVTI, Trivandrum to which the applicant is claiming promotion became Group B Non Gazetted post with effect from 20.4.98 as the said post was granted the scale of pay of Rs. 5500-9000 and not with effect from 8.11.03., the date of publication of the new Recruitment Rules, a contended by the applicant.

4 We have heard Advocate Shri TC Govindaswamy, for the applicant and Shri TPM Ibrahim Khan, SCGSC for the respondents and have also given anxious consideration to the various contentions raised by the parties. In our considered view the reliance of the Applicant on the judgments of the Apex Court Court in **N.T.Devin Katti and others Vs. Karanataka Public Service Commission and others, (1990) SCC (L&S) 446** and **Y.V.Rangaiah V. J.Sreenivasa Rao, (1983)3 SCC 284** and other cases is totally misplaced. The nomenclature of different posts may be the same but posts with the same nomenclature need not be

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identical or similar. The classification of the post and the scale of pay attached to it, the age and educational qualifications prescribed for recruitment/appointment against the post, method of recruitment whether by direct recruitment or by promotion, transfer, deputation etc., and the grades from which such promotion, transfer, deputation etc. were made make a post distinct and separate from other posts. Even though the nomenclature of the post of "Office Superintendent" in the office of the Respondent No.5 continued to remain the same, with the issuance of the Annexure.R.5 notification dated 20.4.98 mentioned above, the classification and scale of pay of the same have changed making it a different post altogether. In other words, the old Group 'C' post of Office Superintendent with the scale of pay of Rs. 1600-2660 (revised to 5000-8000) ceased to exist and the new Group 'B' post of Office Superintendent in the scale of pay of Rs. 5500-9000 came into existence from the said date. The exclusion of Stenographers from its feeder cadre is the result of the acceptance of the recommendation of the 5th Central Pay Commission by the Government of India. Once the recommendation of the Pay Commission has been accepted and post has been reclassified as Group 'B' , further appointments have to be made against the Group 'B' post. For such appointments on regular basis in future, the Recruitment Rules have to be amended. It is for this reason that the post of Office Superintendent which became vacant on 1.4.2001 was not filled up on regular basis and

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the applicant was appointed to that post on ad hoc basis with the revised scale of pay of Rs. 5500-9000. Therefore, it cannot be said that the earlier rule, namely, Directorate of Training (Vocational Training Programme for Women Group 'C' Non Gazetted Ministerial) Recruitment Rules, 1995 was still in existence till the new rule, namely, the Directorate of Training (Vocational Training Programme for Women) Office Superintendent Group 'B' Non-Gazetted (Ministerial) posts Recruitment Rules, 2003 was notified on 8.11.2003. We, therefore, do not find any irregularity on the part of the Respondents in filling up the posts of Office Superintendents at various Regional Vocational Training Institutes for Women including the one in the office of the 5th Respondent applying the revised eligibility criteria in terms of the Annexure A5 notification.

5 In the above facts and circumstances of the case, we do not find any merit in the O.A and therefore the same is dismissed. There shall be no order as to costs.

Dated this the 21st day of June, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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