

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION

:

30.10.1989

P R E S E N T

HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.464/86

1. K.T John
2. R.Prasannakumaran Nair .. Applicants

v.

1. Union of India, represented by
Secretary to Government, Ministry of Finance,
Department of Revenue & Insurance, New Delhi.
2. The Commissioner of Incometax, Cochin also the
Chairman of the Departmental Promotion Committee,
for Selection to the Post of Inspectors of
Incometax.
3. Shri T.G Vijayaraghavan .. Respondents

M/s. G.Sivarajan and S.Santhosh Kumar .. Counsel for
the applicants

Mr PA Mohammed, ACGSC .. Counsel for
the
respondents

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 20.5.1986 filed under Section 19 of the Administrative Tribunals Act, the two applicants who have been working as Stenographer in the Special Grade and Senior Grade in the Income Tax Department have challenged the impugned order dated 1st October, 1985 at Annexure-II by which quotas have been fixed between the Ministerial feeder cadre and the Stenographic feeder cadre for promotion as Income Tax Inspectors in the ratio of 3:1. The main ground of challenge is that these administrative instructions fixing the quota are in violation of the statutory Recruitment Rules (Annexure-I) in accordance with which 66 2/3 % of the vacancies of Income Tax Inspectors are to be filled from two integrated lists in which both the Ministerial staff as well as Stenographers are to be

..2..

graded together. In one list the gradation will be on the basis of seniority and in the other list the gradation would be on the basis of date of passing the Departmental Examination for promotion as ITI. Vacancies in the promotion quota are to be filled up alternately from these two lists. The applicants are aggrieved because while on the basis of the statutory Recruitment Rules they would have been eligible for being considered for promotion as ITI by selection on the basis of their gradation in either of the two lists, by fixing quotas between the Ministerial and Stenographic cadres, they are being deprived of the vacancies which would be going to the Ministerial staff who may be junior to them by virtue of the quota fixed for them. They have also argued that considering that there are 120 qualified candidates in the Ministerial cadre and 70 in the Stenographic cadre, the ratio of 3:1 itself is hostile and discriminatory against the Stenographers.

2. The respondents have in their counter affidavit dated 31st October, 1986 justified the quota system on the ground of giving equal chances to the two feeder categories. They have stated that there are 360 persons in the Ministerial feeder category as against 97 in the Stenographer's category and the ratio of 3:1 is more advantageous to the Stenographers on the basis of numerical proportion. They have also stated that there is no inconsistency between the statutory Recruitment Rules and the impugned orders as the Recruitment Rules themselves provide for relaxation of the Rules. They have stated that by giving first 6 vacancies to the Ministerial candidates in the two lists and the 7th and 8th to the Stenographers, the Recruitment Rules are not violated. They have also argued that strictly speaking in accordance with the Recruitment Rules, the applicants who are Stenographers

..3..

in the Special Grade and Senior Grade are not eligible for consideration, but the impugned orders have made all grades of Stenographers eligible ^{for} ~~to~~ their own quota. During the pendency of this application, the respondents amended the Recruitment Rules vide the Notification dated 20th September, 1986 (Annexure-IV) incorporating the quotas in the Recruitment Rules. The amendment was deemed to have come into force from 1st October, 1985. The applicants have challenged the amendment also as violative of Articles 14 and 16 of the Constitution. They have also challenged retrospective effect being given to the amendment as ^{being} ~~a~~ prejudicial to them and have drawn attention to the clarificatory communication dated 3rd October, 1985 issued by the Central Board of Direct Taxes stating that the quota system will be applicable for preparing the lists for consideration of the DPC to be held after the issue of the instructions.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We are not able to appreciate the arguments of the learned counsel for the respondents that the fixation of quota is permissible under the relaxation clause of the Recruitment Rules. This clause reads as follows:-

"5. Power to relax - Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of posts or persons."

We feel that the above clause cannot be used for changing the basic structure of the recruitment mode. The Recruitment Rules as they originally stood before 1.10.85 envisaged preparation of two integrated seniority lists in which both the Ministerial staff as well as the Stenographers are combined. In the first list they are combined on

the basis of seniority and the second list on the basis of the date of passing the Departmental Examination. The promotion quota vacancies are thereafter filled alternately from these two lists. There was no distinction between the Stenographers and others for selection within the zone of consideration. In the quota system, however, the vacancies are earmarked between the Ministerial staff and the Stenographers in the ratio of 3:1 which means that howsoever senior or meritorious a Stenographer may be, in either of the two lists he will not be considered if the vacancy is earmarked for the Ministerial staff. The quota system, therefore, changes the recruitment procedure basically and qualitatively and this change cannot be brought ^{about} ~~out~~ by the relaxation clause. The respondents themselves seem to have realised the factuousness of invoking the relaxation clause to justify the impugned instructions and have issued statutory amendment to the Recruitment Rules on 20th September, 1986 when they issued the amendment to take effect from 1st October, 1985.

4. But the fact remains that in the impugned order dated 1.10.85 it was specifically mentioned that "the Income-tax Department (Inspector) Recruitment Rules, 1969 are being amended". It cannot therefore be said that the amendment Notification dated 20th September, 1986 (Annexure-IV) was issued to frustrate the application before the Tribunal. The question is whether the amendment can be given effect to retrospectively. In P.W. Agarwal v. State of U.P. & Others, ATR 1987(2) SC 128, it was held by the Supreme Court that Government has, under proviso to Article 309 of the Constitution, power to frame rules regarding conditions of service including power to amend or alter rules with retrospective effect, but that should not take away or impair vested rights.

..5..


Since in the instant case before us, no vested right of promotion had accrued to the applicants, they cannot challenge the retrospectivity given to the amendment. It is true that by the quota system the chances of promotion are likely to be affected, but as has been held in catena of cases ~~that~~ ^{are} mere chances for promotion ~~is~~ ^{are} not a condition of service and is not protected (State of Mysore v. G.B Purohit, 1967 SLR SC 753). Since by the amendment the right of being considered for promotion has not been taken away, but the modality of being considered has been modified, the quota system cannot be faulted. Besides, the quota system affects the Stenographers as much as the Ministerial staff and by their respective strength in Kerala, i.e., 360 : 97, the quota fixed for either category cannot be held to be arbitrary or discriminatory. The learned counsel for the applicant has referred to the ruling of the Supreme Court in T.R Kapur and others v. State of Haryana and others, AIR 1987 S.C 415, in which retrospective amendment rendering Diploma holders completely ineligible for promotion was held to be unconstitutional. The facts of that case differ from those in the instant case before us. The vires of the impugned amendment in that case ~~were~~ ^{were} to be examined in the context of the Punjab Reorganisation Act of 1966 where the previous approval of the Central Government was to be obtained for altering the service conditions. Further, in that case the right to be considered for promotion was totally taken away from the Diploma holders while in the instant case before us, the right of consideration exists for the Stenographers as such.


5. In the facts and circumstances we see no merit of in the application and ~~dispose~~ the same with the direction that

✓

..6..

in respect of the vacancies of Income Tax Inspectors which arose prior to 1st October, 1985 promotion should be made on the basis of the unamended Recruitment Rules without reference to the quota system. In the circumstances there will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER
30/7/89


(S.P. MUKERJI)
VICE CHAIRMAN
30.7.89

n.i.i