

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 466
T. A. No.

1990

DATE OF DECISION 7.2.1992

A. K. Raman and 4 others Applicant (s)

Mr. B. Raghunathan Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
the Secretary, M/O Home Affairs
New Delhi and others

Mr. C. Kochunni Nair, ACGSC Advocate for the Respondent (s) 1-3
Mr. K. Ramakumar for R 4-8

CORAM :

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicants are working as Statistical Assistants on regular basis in the office of the third respondent. They were promoted to the grade of Statistical Assistant w.e.f. 10.9.80, 1.1.1981, 1.1.1981, 1.1.1981 and 2.1.1981 respectively. They were also regularised in that grade w.e.f. 1.4.1982 as per Annexure A. Their grievance in this application is that their promotion to the post of Tabulation Officer/Investigator should have been granted to them w.e.f. 1.4.1985 in preference to respondents 4 to 8 and similarly placed persons.

2. The applicants are graduates and completed three years regular service in the post of Statistical Assistant. The next higher grade to which they are eligible is Tabulation Officer/Investigator. As per Annexure-B notification, G.S.R. 463 dated 11.5.1985, a relaxation was made w.e.f. 11.3.1985 in the requirement of graduation as basic qualification for promotion to the grade of Tabulation Officer/Investigator. Before this relaxation was made, a number of vacancies were existing but the applicants were not promoted. After Annexure-B relaxation, a good number of unqualified juniors of the applicants became qualified for promotion to the post of Tabulation Officer/Investigator and they were also promoted. Hence, under these circumstances, the applicants submitted that the third respondent illegally promoted respondents 4 to 8 who were unqualified to be promoted to the post of Tabulation Officer/Investigator in the vacancies that existed prior to 1.11.1985. Under the then existing rules, Annexure-C is the seniority list of Statistical Assistants as on 1.6.89 issued by the third respondent as per order dated 26.8.89. The applicants 3 & 4 submitted Annexure-D and E representations on 3.12.87 and 8.12.87 ^h against the illegal promotion given to the respondents 4 to 8. Similar representations were submitted by other applicants as well. But, these representations were not disposed of. The fourth applicant approached this Tribunal by filing O.A. 43/89. When the matter came up for hearing, it was disposed of with direction to the

respondents to consider and dispose of the representation dated 3.12.1987. Annexure-F is the judgment. Thereafter, the third respondent informed the fourth applicant by Annexure-G memorandum dated 2.6.89 that his request has been rejected. Similar reply was received by other applicants. The applicants are challenging Annexure-G and similar orders. They have sought for the following reliefs:

- "a) to call for the records leading to the issuance of memo Annexure-G and the order passed by the competent authority culminating in Annexure-G and quash the same;
- b) to issue an order declaring that the applicants are entitled to be regularly promoted to the vacancies which arose before 11.5.1985 in the post of Tabulation Officer/Investigator in the office of the third respondent;
- c) to issue an order declaring that the ad hoc promotions given to respondents 4 to 8 in the post of Tabulation Officer/Investigator is illegal and void.
- d) to issue an order declaring that the provision in the notification dated 11.5.1985 enabling the taking away of the basic qualification of graduation for the purpose of promotion to the post of Tabulation Officer/Investigator is illegal and unconstitutional.
- e) to grant such other reliefs the applicants may pray for and which this Hon'ble Tribunal deems fit and proper;
- f) to award the costs of the applicants in this proceedings."

3. The claim of the applicants were denied by the respondents in the reply statement. They have stated that the next higher grade to the post of Statistical Assistant is not Tabulation Officer/Investigator as contended by the applicants. At present there is no post designated as Tabulation Officer/Investigator in the office of the respondents. The next grade now existing

to the Statistical Assistant for promotion is Investigator.

Previously, the post of Tabulation Officer (group-C non-gazetted) and Investigator (Group-B non-gazetted) were existing in the office of the third respondent. The post of Tabulation Officer was feeder category for promotion to the post of Investigator. However, as per Annexure R-1 order dated 6.2.1981 7 temporary posts of Investigators were created in the office of the third respondent in lieu of 7 posts of Tabulation Officer in the identical scale of pay of Rs. 550-900 (pre-revised) w.e.f. 6.2.81 with a view to merge the cadre of Tabulation Officers and Investigators which though carried identical scale of pay of Rs. 550-900 (pre-revised) continued to be classified as group-C and group-B posts respectively. Thus, there is no post of Tabulation Officer in the office of the third respondent after 6.2.1981. The post of Tabulation Officer (group-C non-gazetted) and Investigator (group-B non-gazetted) were treated as two different categories in all respects. As per the Recruitment Rules dated 24.3.1973 (Annexure R-2) the post of Tabulation Officer has to be filled up by promotion of Statistical Assistant/Jr. Investigator with three years of regular service in the grade and possessing at least a Degree of a recognised University. The Registrar General by his letter dated 28.8.80 (Annexure R-3) informed that a decision has been taken to amend the recruitment rules for the post of Tabulation Officer with a view to remove the minimum educational qualification of graduation prescribed for promotion xxxxxxxxxxxx of Statistical Assistants and pending formal amendment to the recruitment rules, no regular promotion to the grade of Tabulation Officer ^{is to be made} was made.

and "if" adhoc appointment ^{is} ~~was~~ to be made ^{by} ~~only~~ those fully qualified be appointed. R-4 dated 20.12.80 modified this condition and permitted adhoc appointment of those who did not have the necessary educational qualification as there was a proposal to relax it. The vacancies available at that time were thus filled up on an adhoc basis only subject to the exigency of public service by the contesting respondents who did not have the educational qualification. The letter Annexure R-VI dated 25.2.85 was issued so as to enable the respondents 1 to 3 to make regular promotion to the post of Investigator. According to the said rules, 75% of the vacancies of Investigators has to be filled up by promotion failing which by direct recruitment and 25% by direct recruitment. Statistical Assistants with 5 years regular service are eligible to be considered for promotion to the post of Investigator even if they do not possess the minimum educational qualification of graduation. The sanctioned strength in the cadre of Tabulation Officer (group-C non gazetted and Investigator (group-B non-gazetted) were 7 and 3 respectively. All these vacancies were filled up in accordance with provisions contained in the Recruitment Rule and there are no vacancies existing in the post of Tabulation Officer in the office of the third respondent as contended by the applicants. During the recruitment year 1981, 5 posts of Tabulation Officer fell vacant consequent on the appointment of regularly appointed Tabulation Officers as Investigators on regular basis. In accordance with the instruction contained in Annexure R-IV dated 20.12.80, R-4 to 8 who were regularly appointed Statistical Assistants were promoted as Tabulation Officers on ad hoc basis in the above vacancies considering the inter-se seniority in that grade.

These promotions were made w.e.f. 4.2.1981. At the time of these appointments, none of the applicants was eligible for consideration either to the post of Tabulation Officer or Investigator as they were appointed as Statistical Assistant on a regular basis only w.e.f. 1.4.1982. Even on 1.5.1985, the date on which the latest amendment on the Recruitment Rules (Annexure R-6) for the post of Investigator was notified, the applicants were ^{not} eligible to be appointed as Investigator as they did not complete 5 years regular service in the cadre of Statistical Assistant. The fact that there was no grade of Tabulation Officer existing in the office of the third Annexure-I order dated 6.2.81 ^{has} been appreciated ^{by} respondent after / 6.2.81 ~~was passed~~ has not/by the applicants.

4. The respondents 4 to 8 have also filed separate reply affidavit ~~adopting~~ the details submitted by the Respondents 1 to 3.

5. Applicants have filed rejoinder on 6.1.92 denying the the submission of the respondents.

6. The learned counsel for the applicant, Shri Raghunathan, mainly submitted the following points:

- i) The applicants being graduates were fully eligible under the then existing Recruitment Rules for promotion as Tabulation Officer/Investigator and they could have been appointed to the vacancies which arose prior to 11.5.85
- ii) The amended recruitment rules, brought about by Annexure-B in 1985, deleted the graduation as minimum qualification only to enable Respondents 4 to 8 to get a march over the applicants and deprive them of the chance of earlier promotion as Tabulation Officer and thereby become ^{be} eligible for further promotion for which graduation has been fixed as essential qualification.

7. The applicants have not produced any satisfactory and convincing materials to establish that there were existing vacancies of Tabulation Officer/Investigator prior to the amendment of the existing Recruitment Rules in 1985 as contended by the applicants. According to the statement in the counter affidavit filed by the respondents 1 to 3, there are no post of Tabulation Officer/Investigator in the office of the third respondent at the relevant time. The next higher post to which a Statistical Assistant can claim promotion is Investigator. Though previously the post of Tabulation Officer and Investigator were existing separately, as per the Registrar General's letter dated 6.2.1981 (Annexure R-I), 7 temporary posts of Investigator were created in the office in lieu of 7 posts of Tabulation Officer in the same scale. This was created with a view to merge the cadre of Tabulation Officer and Investigator which though carried identical scale of pay, continued to be classified as group-C and Group-B posts respectively. However, the respondents 4 to 8 who were regularly appointed as Statistical Assistant were given promotion as Tabulation Officer on ad hoc basis against 5 posts of Tabulation Officers which fell vacant consequent on the promotion of the incumbents by Annexure A-VII order dated 29.1.81 w.e.f. 4.2.1981 as per Annexure R-5 order. At that time, none of the applicants was qualified for consideration wither to the post of Tabulation Officer as they were appointed as Statistical Assistant on regular basis only w.e.f. 1.4.1982. After the creation of 7 temporary posts of Investigators by keeping in abeyance 7 postsoof Tabulation Officers, the respondents continued as Tabulation Officers on the posts of Investigators. After 1981, no appointment to the post of Investigator has been made either on regular or ad hoc basis since there was no

vacancy in that cadre. Only the officials who were appointed as Investigator on ad hoc basis were allowed to continue as such pending finalisation of the amendment to the Recruitment Rules (Annexure R-VI) ⁴ Rules for the post of Investigator. The revised / came in 1985 on which date the applicants were not eligible to be appointed as Investigator as they did not complete 5 years regular service as Statistical Assistant. Therefore, on these facts, the applicant cannot have any grievance against the appointment of Respondents 5 to 8 as Investigator. Under these circumstances, we see no merit in the first ground urged by the learned counsel for the applicant.

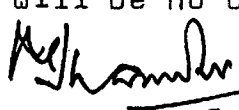
8. Regarding the second contention raised by the learned counsel for the applicant, it is also to be rejected on the facts and circumstance of the case. There is no material to satisfy us that the amendment was brought about only to enable the respondents 1 to 3 to give earlier promotion to respondents 4 to 8 by relaxing the requirement of minimum qualification of education. It is a valid decision that has been taken by the Govt. and this was indicated even before such an amendment was actually notified. Pending the finalisation of the modified/amended recruitment rule, the Government decided not to make any regular appointment to the post of Tabulation Officer/Investigator. This decision of the Govt. cannot be assailed on the ground raised by the applicants. Such a decision was not taken ^{either} ~~to~~ to deprive the applicants of their chance to get promotion ~~or xxxxxxxxxxxxxxxx~~ for the purpose of enabling the respondents 4 to 8 to get a march over the applicants. In fact, ad hoc promotion of respondents 4 to 8

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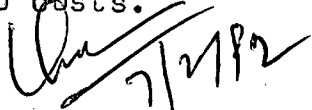
to the post of Tabulation Officer were made on 4.2.1981 even before the applicants were appointed as Statistical Assistants on regular basis. These promotions appears to have been ordered strictly based on the instructions of the second respondent dated 20.12.80. They were also allowed to continue as Tabulation Officers on adhoc basis under the orders of the second respondent from time to time. The allegation of malafide raised by the applicants in the application has not been established with any materials. It is rejected.

9 It is only necessary to add that the applicants became eligible for consideration for promotion as Tabulation Officers on 1.4.85 on which date they had rendered regular service of Statistical Assistants for 3 years. However, as on that date the post of Tabulation Officer did not exist ~~as all~~⁶ as all these posts have been kept in abeyance from 1981 by the Annexure R1 order. In the circumstance, there was no question of considering them for promotion as Tabulation Officers on that day.

10 In the result, we are satisfied that the applicants have not made out any case for grant of the reliefs as prayed for in the application. Hence, it is liable to be dismissed. Accordingly, we dismiss the same. There will be no order as to costs.


(N DHARMADAN)
JUDICIAL MEMBER

7.2.92


(NV KRISHNAN)
ADMINISTRATIVE MEMBER

KMN