

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 528/ 1989
~~TAX~~No.

DATE OF DECISION 18.6.90

T.M Paul and six others Applicant (s)

M/s. M.R Rajendran Nair Advocate for the Applicant (s)
P.V Asha & Tharian Joseph
Versus

Union of India , represented Respondent (s)
by its Secretary to Govt,
Ministry of Information and Broadcasting & another

Mr.K.Prabhakaran, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

&

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ye*
2. To be referred to the Reporter or not? *N*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. To be circulated to all Benches of the Tribunal? *N*

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicants are working in the clerical cadre under the Director General of A.I.R. According to them they are eligible for the next promotion as Head Clerk/Accountant/Sr Storekeeper which is denied to them in the light of the amended rules. Hence they have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Under Annexure-I Recruitment Rules dated 24.2.1970 50% posts to the above category will be filled up from among Clerks Grade II/Clerks Grade I/Store Keepers and Stenographers having a minimum of 5 years service in any of the grades on the basis of a qualifying departmental

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examination. The other 50% was to be filled up by promotion on the basis of seniority-cum-fitness from the feeder categories. This was amended by Annexure II. Annexure III notification dated 18.3.82 was issued for fixing departmental examination for promotion to the post of Head Clerk/Accountant/Sr.Storekeeper. The applicants 1 to 3 appeared for the test and passed the same. Similarly in another examination conducted in 1983, the applicants 4 to 7 have also appeared and they were successful. But they were not promoted even though they were fully qualified and eligible to be promoted to the next higher grade. They have the accrued right for promotion. There was an assurance to the applicants as evidenced from Annexure-V that the qualified candidates would be absorbed in the next higher posts.

3. Before the absorption of the applicants on the basis of the assurance a modified Recruitment Rule Annexure-VI was issued by the respondents on 25.3.88 which made the following changes in the recruitment and promotions:-

"(i) 20% by direct recruitment

(ii) 80% by promotion

Note: The provision of 20% recruitment on direct basis will be operative only after the last candidate on the panel of qualified candidates by the limited departmental examination for appointment to the post of Head Clerk/Accountant/Senior Storekeeper has been absorbed in the post in the particular zone."

4. Subsequently, the DG has also issued a clarification stating that the new Recruitment Rules have to be followed

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while making promotion to the Head Clerk/Accountant/
Sr.Storekeeper, etc. in the Zones where departmentally
qualified hands are available by following the aforesaid
percentage.

5. Aggrieved by Annexures VI and VII the applicants
approached this Tribunal seeking to quash the impugned
orders and for a direction to promote the applicants
on the basis of the qualification and pass in the
departmental examination held in the years 1982 and 1983
to the extent of 50% of the posts.

6. The respondents have filed a counter affidavit
and opposed the claim of the applicants that they had a
vested right for getting promotion on the basis of their
having been passed in the departmental examination
held in the light of the unamended Recruitment Rules.

7. At the time of the hearing, the learned counsel
for the applicants, Mr.M.R Rajendran Nair, brought to
our notice a decision rendered in O.A 601/89, by the
Madras Bench of the Tribunal considering the identical
issue. In that case the Tribunal held as follows:-

" In the result, we set aside the clarification
given in the letter dated 19/22.4.89 stating that
the recruitment in respect of direct recruits
should be adjusted to 20% and we direct the
respondents to consider and promote the applicants
as per the note under column 11 of the recruitment
rules observing the quota of 50% in favour of the
direct recruits till the last candidate on the
panel of qualified candidates, who have qualified
for the departmental examination has been absorbed.
Ordered accordingly."

8. The learned counsel for the respondents was not able to distinguish the judgments and he has no case that the said judgment would not apply to the facts of the case.


9. The matter is covered by the latest decision of the Supreme Court reported in P. Mahendran and others vs. State of Karnataka and others, AIR 1990 SC 405 in which a more or less similar question was considered by the Supreme Court on a different circumstance and held that the selection process which was started on the basis of the existing rules and procedure can be continued and completed accordingly under that rules notwithstanding the subsequent amendment of the rules changing the procedure for selection provided there is an accrued right in favour of the candidates. The observation in the judgment reads as follows:-

"5. It is well settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 does not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the Rule with retrospective effect. Since the amending Rule was not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending

Rules came into force. The amended Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter."

10. In the light of the principles laid down in the Supreme Court judgment we allow the application and direct the respondents to consider and promote the applicants as per the existing rules reserving the quota of 50% in favour of the direct recruits as contended by the applicants notwithstanding the impugned orders.

11. The application is allowed. There will be no order as to costs.


18.6.90
(N. DHARMADAN)
JUDICIAL MEMBER


18.6.90
(S.P. MUKERJI)
VICE CHAIRMAN