

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

251 of 1991

DATE OF DECISION 30.1.1992

K.I. ANTONY

Applicant(s)

Mr. M.R. Rajendran Nair

Advocate for the Applicant (s)

Versus

Union of India rep. by Respondent (s)
Secretary, Ministry of Urban
Development and 2 others

Mr. V. Ajith Narayanan, Advocate for the Respondent (s)
ACGSC

CORAM :

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

and

The Hon'ble Mr. N. Dharmadan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
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 S.P. Mukerji, Vice Chairman)

In this application dated 12.2.1991 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Compositor Grade I in the Government of India Press, Koratty under the Ministry of Urban Development has prayed that the impugned order dated 20.9.90 at Annexure-I rejecting his representation for being considered for the post of Plate Maker, the order dated 7.3.89 at Annexure-II abolishing the post of Compositors and the Recruitment Rules at Annexure-V to the extent it affects his prospects should be set aside and that he should be declared to be entitled to be considered for appointment by transfer to the post of Plate Maker and Key Board Operator in preference to his juniors consequent upon abolishing of the post of Compositors.

2. He is aggrieved by the fact that in accordance with the amended Recruitment Rules (Annex.VI) transfer to the post of Plate Maker, of Compositors can be made only when the Compositors have successfully undergone a training in Plate making and possess the educational qualification of matriculation or equivalent and are below 45 years of age. The applicant is neither a matriculate nor is he below 45 years of age and accordingly he has not been selected for training while his juniors have been selected for training for ultimate absorption as Plate Makers. The applicant's post of Compositor having been abolished he is under threat of losing his job. He had been directly recruited as a Compositor in 1966 when he was fully qualified in age and educational qualifications. He was confirmed as Compositor with effect from 4.12.78 and promoted as Compositor Grade I on an adhoc basis with effect from 29.10.79 and was regularly appointed as Compositor Grade I on 11.4.81. The Recruitment Rules for the post of Offset plate Maker at Annexure-V was amended on 12.3.90 by Annexure-VI whereby the posts are to be filled 100 per cent by transfer of Compositors who have undergone six months training in Plate making, are below 45 years of age and possess educational qualifications prescribed for direct recruitment ie., matriculation or equivalent. His contention is that with modernisation and change of technique in Government of India Presses when the question of **retrenchment** arose, there was an agreement in the Departmental Council of the Joint Consultative Machinery in May , 1985 that the existing operators would be trained in the new technology and absorbed in the new scales. A Copy of the relevant portion of the agreement has been appended at Annexure-VII. He has also referred to the

minutes of the meeting held with the Director of Printing on 3.7.90 at Annexure.IX in which it was recorded that the Director categorically explained that the selection will be made from amongst Compositors directly according to the seniority-cum-suitability and that training would be imparted to the Compositors against the newly created posts of Key Board Operators and Plate Makers. He has referred to two Compositors junior to him who were sent for six months' training on Plate Making even though they were non-matric and above 45 years of age. His representation was rejected by the impugned order at Annexure-I. His argument is that in accordance with the Recruitment Rules of 1987 at Annexure-V, Compositors are eligible for promotion as Assistant Section Holder and further promotion as any Section Holder irrespective of minimum qualification or maximum age limit. These Rules were amended in respect of Plate Makers in order to absorb the Compositors who may be rendered surplus. This amended Recruitment Rules by clamping an upper age limit and minimum educational qualification is discriminatory. He has also referred to a case of a Compositor in Government of India Press, Coimbatore where in spite of his being a non-matriculate and above 45 years age, he was transferred as a Plate Maker under the modernisation programme of that Press.

3. In the Counter-affidavit the respondents have relied upon the statutory amendment to the Recruitment Rules where the upper age limit and educational qualifications were prescribed. The question of relaxation according to those Rules would arise only if the required number of eligible Compositors were not available.

Matriculation being the minimum educational qualification for appointment as Plate Maker and Key Board Operator, the applicant could not be considered for transfer as Plate Maker. They have explained that consequent on modernisation, 23 posts of Compositors were abolished vide the impugned order at Annexure-II because the services of the Compositors are not required for Offset Printing technology which has replaced the letter Press printing technology. They have conceded that newly created posts are to be filled up within the existing staff as far as possible but the statutory Recruitment Rules could not be ignored. They have conceded that when the applicant was appointed as Compositor he was within the prescribed age limit and being matriculation failed, fulfilled the educational qualification of 8th standard prescribed for the post. They have also conceded that under the Recruitment Rules of 1987 Compositors Grade I with three years of service are eligible for the post of Assistant Section Holder in the scale of Rs.1320-2040. They have averred that the applicant is not affected by laying off or retrenchment and it is not feasible to give training to all where young people within the age limit as per the Recruitment Rules are available. They have not denied the discussions which took place with the Director of Printing and the representatives of staff but have stated that relaxation of Recruitment Rules is possible only at the level of the Central Government. In regard to the two juniors mentioned by the applicant they have clarified that they possessed and the required educational qualification/were within the age prescribed in the Recruitment Rules. They

have not denied the instance of a non-matriculate and over-aged Compositor of Coimbatore Press's transfer as Plate Maker stating that they are not in a position to comment upon it. Even though the posts of Compositors have been abolished they are allowed to continue in the same post.

4. In the rejoinder the applicant has pointed out that in the Machine Branch of the Government of India Press, Koratty when the posts of Letter Press Machinemen were abolished along with the Compositors on 7.8.89 they were trained in Offset technology and appointed as Offset Machineman without consideration of age or educational qualifications. Most of them were about 50 years of age. He has also argued that the Recruitment Rules prescribe age for the purpose of appointment as Plate Maker but not for being sent for training.

5. In the reply to the rejoinder the respondents have stated that for transfer of machine crew to Offset side there was no age limit as has been prescribed for Compositors in the Recruitment Rules. They have clarified that all the persons selected for training as Plate Makers were within the 45 years of age even at the end of the training and delay in training and trade test should not debar them from being appointed as Plate Maker. Discussions held with the recognised union of the press were informal one and the local officers of the Press had no power in regard to re-deployment of the existing Compositors or protecting their interest. They clarified that two Compositors of the Government of India Press, Coimbatore were selected for training in Plate making before the Recruitment Rules prescribing the age limit came into force.

6. In the additional rejoinder the applicant has stated that his grievance would have been solved if age relaxation was granted to him in accordance with Rule 6 of the Recruitment Rules. If others could be given training before the Recruitment Rules were amended there is no reason why the applicant was not given similar training. He has mentioned the case of Shri Thirumalaswamy at Annexure-XII who was given the trade test and later appointed as Plate Maker when ^{on} ~~at~~ both occasions he was above 45 years of age. He has also referred to a case of one Shri N. Manikanta Prakash at Annexure-XVI who was sent for training when he was less than 45 years of age but would be completing the training after he crosses the 45 years of age.

7. The respondents in the supplementary counter have explained that Shri Manikanta Prakash was selected and deputed for training in Plate making by the D.P.C. when he was less than 45 years of age, which is not the case of the applicant. They have rebutted that there is no laying off or retrenchment and therefore the interest of the applicant has not been adversely affected so far.

8. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Due to modernisation of the Government of India Presses it was fully within the administrative wisdom of the respondents to abolish redundant post of Compositors to the extent they outlive their utility. On humanitarian considerations the respondents have indicated that the applicant will not be retrenched. The applicant himself has stated that as a Compositor he is

eligible to be considered for promotion as Assistant Section Holder in the scale of Rs.1320/2040. It cannot therefore, be said that the applicant has reached a blind alley in his career. As regards amending the Recruitment Rules, the Government are at liberty to amend them in the public interest and prospects of promotion of any group of officers are not relevant for this purpose. It is now established law that a Government servant in a particular position has a right to be considered for promotion but has no right to be promoted. In one of the recent judgments the Hon'ble Supreme Court in Union of India and others Vs. L.Dutta and another, AIR 1991 SC 363 has observed that reduction in chances of promotion is a change in policy and not a change in condition of service. In State of Mysore Vs. G.B.Purahit, 1967 SIR (SC) 753, the Supreme Court held that though a right to be considered for promotion is a condition of service, mere chances of promotion cannot be regarded as a condition of service. Hence a rule or administrative instruction cannot be challenged on the ground that chances of promotion of the petitioner had been reduced thereby and such a rule cannot be regarded as one varying the conditions of service. In K.Jagadeesan vs. Union of India and 4 others, ATR 1988(2) CAT 186, this Tribunal has held that the Recruitment Rules can be amended making some ineligible who were earlier eligible and that by such an arrangement vested rights are not impaired. In Girish Sahai and others Vs. Union of India, (1989) 9 ATC 251, it has been held that Recruitment Rules can be modified even if prospects of promotion are affected. In State of Andhra Pradesh vs. V.Sandanam, (1989) 11 ATC 391 the Supreme Court held that specifying the mode and source of recruitment is exclusively in the domain of the Executive and Judicial bodies should not intervene in the

policy of recruitment. In J.Rangaswamy vs. Government of Andhra Pradesh, 1990 Lab. I.C.296, the Supreme Court held that the Courts are not expected to consider or assess the relevancy and suitability of qualifications.

9. In view of the aforesaid clear rulings, we have no doubt in our mind that the Government of India was fully within their power to amend the Recruitment Rules of Plate Makers for absorption of such Compositors and others who according to them would be of prolonged use to them. In that respect fixing an upper age limit of 45 years for the purpose of training and transfer as Plate Makers cannot be faulted. The applicant's plea that the upper age limit in the Recruitment Rules should not be a factor to deny him training for Plate Maker is not convincing. The training is for the purpose of subsequent absorption as Plate Maker and ^{hence} ~~after~~ training of those who are ^{already} not eligible for absorption as Plate Maker will be a waste of public resources. The precedents quoted by the applicant also do not impress us. Those who have been sent for training were within 45 years of age at the time of being sent for training. The applicant ^{has} already crossed 45 years of age and therefore cannot claim parity with them. The precedents quoted for the Coimbatore Press where the Recruitment Rules seem to have been violated would not justify the Tribunal directing another violation of the statutory Recruitment Rules. Further, even otherwise the cadre of Plate Makers was not in the regular line of promotion of the Compositors. As a special dispensation certain categories of Compositors were made eligible for being

transferred as Plate Makers after training. The applicant did not have even a vested right to be considered for promotion as Plate Maker.

10. However, even though the applicant does not have a legal right, since it appears that he is the only person suffering on account of the amended rules and there are provisions for relaxation of those rules, the respondents will be well advised to reconsider his case on humanitarian grounds. Accordingly we dispose of this application with the direction to the applicant to make a representation within a week from the date of communication of this order to the competent authority to reconsider his case and the respondents are directed to get his case reconsidered on humanitarian grounds by relaxing the Recruitment Rules in accordance with law. There will be no order as to costs.

N. D. Harmadhan

30.1.92

(N.D.HARMADAN)
JUDICIAL MEMBER

S.P. Mukerji

30.1.92

(S.P.MUKERJI)
VICE CHAIRMAN

30.1.92

Ks20192.