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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW
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Original Application No. 351 of 1990
this the 24th day of December, 1995.

HON'BLE MR V.K. SETH, MEMBER (A)
HON'BLE MR D.C. VERMA, MEMBER(J)

Yogendra Sharma, aged about 35 years, S/o Late
M.L. Sharma, R/o Lucknow at present posted as
Personal Assistant in the Office of Chief Engineer,
Central Command, Lucknow.

Applicant

By Advocate : Sri O.P. Srivastava

Versus

Union of India through the Secretary Govt. of India
Ministry of Defence, New Delhi.

2. The Engineer-in-Chief, Army Headquarters,
Kashmir House, DHQ PO, New Delhi.

3. The Chief Engineer, HQ, Central Command,
Lucknow cantt.

Respondents

By Advocate : Dr. D. Chandra

O R D E R

V.K. SETH, MEMBER(A)

By means of this O.A., the applicant has
prayed that he be declared as promoted to the post
of P.A. Grade-II w.e.f. 17.12.1983 with all benefits.
He has also prayed for quashing the order of the
respondents dated 30.11.1988 wherein it was interalia
provided that the Stenographers Grade-II (P.A.s)

are not eligible for exercising option of clerical cadre w.e.f. 29.3.1985. A further main prayer is to keep the option of the applicant dated 31.1.1986 effective and binding for promotion of Office Supdt. Grade-I/Administrative Officer Grade-II.

2. Pleadings have been exchanged between the parties. We have perused the record of the case and have given anxious thought to the submissions made by the learned counsel for two sides during the course of hearing.

3. The applicant had initially joined as ^{under the} Stenographer on 2.11.1979 in MES/ Ministry of Defence. Vide order dated 17.12.1983 3 posts of Stenographers Grade-B (subsequently redesignated as Stenographer Grade-II) were created alongwith some others posts. The applicant exercised an option for Stenographer Cadre on 12.11.1984. The D.E. C. was convened in January, 1985 and the applicant was promoted from Stenographer to P.A. and the order was implemented on 27.1.1986. The applicant assumed the charge of P.A. on 29.1.1986. On 31.1.1986, he gave his option for clerical cadre i.e. promotion to Office Supdt. Grade-I in terms of Engineer-in-Chief's letter dated 16.7.1981. Vide part-II of the order dated 18.2.1986, option of the application was published (Annexure-15 to the O.A.). This fact is also suitably reflected in the seniority list of PAs issued in November, 1987. On 30th November, 1988 (Annexure-7) Engineer-in-Chief issued orders

interalia mentioning that in view of the recruitment rules for the post of Administrative Officer Grade-II published. Vide SRO-70 of 29.3.1985 Stenographers Grade-II (PAs) were not eligible for exercising option for clerical cadre w.e.f. 29.3.1985 and ^{after} that option for clerical cadre/~~that~~ date were not to be entertained. The letter also mentions that ^{was} ~~no~~ action/~~being~~ initiated to issue amendment to the recruitment rules for the post of Administrative Superintendent Grade-II. Feeling aggrieved by this order, the applicant represented on 26.12.1988 requesting that either the letter be made effective from the date of its issuance i.e. 30.11.1988 or from the date on which actual amendment to provision of recruitment rules of Office Supdt. Grade-I is published in gazette. A further review appeal addressed to Engineer-in-Chief was submitted by the applicant on 17.6.1989 (Annexure-12). The representations of the applicant were rejected vide impugned order dated 30.11.1988 (Annexure-13).

4. The applicant has contended that DPC for promotion to the post of PAs was convened and approved after inordinate delay. He also argues that executive instructions cannot supplant recruitment rules and that the impugned order dated 30.11.1988 was ultra vires of article 14 of the constitution. He also argues that he had already been approved and selected for promotion to P.A. prior to 29.3.1985 but could not assume charge and exercise his option for clerical cadre by that date on account of the delay on the part of the department.

5. It would be useful to briefly discuss the relevant aspects of SRO-70 dated 29.3.1985 (Annexure A-9). The said SRO gives the recruitment rules for the post of Administrative Officer Grade-II. Column 12 thereof reads as under :

"Promotion- Office Superintendent Grade-II with 8 years regular service in the grade including services, if any, rendered in the grade of Office Superintendent Grade-I

Note: Stenographer Grade-II (formerly known as Personal Assistant) who have opted for clerical cadre and are serving as Office Superintendent Grade-I on the date of promulgation of these rules shall also be considered for promotion until they have wasted out provided they have rendered 8 years regular service in the grade including services, if any, rendered in the grade of Office Superintendent Grade-I.*

SRO-235 of 1979 (Annexure A-8) is about recruitment rules for the post of Office Superintendent and Schedule attached thereto provides classification and other requirements for the post of Office Superintendent Grade-I and also Office Superintendent Grade-II. This SRO was issued in exercise of powers conferred by the proviso to article 309 of the Constitution and in supersession of the Ministry of Defence (Class III Posts) Recruitment Rules 1969, in so far as they apply to the post of Office Superintendent in the lower formations in the Defence services, and the Military Engineer Services. The relevant portion of column 11 of the schedule is extracted below :

" Office Superintendent Grade-I

In case of recruitment by promotion, transfer grades from which promotion to be made.

By Promotion

(a) -----

(b) PAs (Rs.425-700) who have opted for the clerical cadre and have 7 years regular service in the grade (5).

II. For the other lower formations. Office Superintendent Grade-II with 5 years service in the grade.

Note : Item II will apply only to the services not covered by item I above.

Office Superintendent II.a. -----
Grade-II

B. 10% from Stenographers with 7 years regular service and who have not opted for P.As cadre.

III. For the other lower formations.
-s."

6. As seen from the above, Stenographers Grade-II (i.e. P.A.s) who have opted for clerical cadre and have 7 years regular service in the grade, can be promoted to the post of Office Superintendent Grade-I. This SRO-235 of 1979 was not amended till the date of option, exercised by the applicant on 31.1.1986. Therefore, the applicant under the said Rules had right to exercise his option for clerical cadre, which he opted on 31.1.1986. The applicant has, therefore, on completion of required length of service, a right to be considered by DPC for promotion to the post of Office Superintendent Grade-I.

7. The Recruitment Rules of 1979 for the post of Administrative Office Grade-II was amended by SRO-70 in the year 1985. This was also issued in exercise of the powers conferred by proviso to article 309 of the Constitution and in supersession of the Military Engineer Services (Administrative Officer Grade-II) Recruitment Rules 1979. This

rule came into effect on 29.3.1985, on that date the applicant was only Stenographer Grade-III and was not promoted even to the post of Stenographer Grade-II i.e. P.A. Thus, the option exercised by the applicant on 31.1.1986 for clerical cadre would not debar the applicant, on eligibility, for his consideration for promotion to the post of Office Superintendent Grade-I.

8. Note in column 12 of SRO-70 dated 29.3.85 (Annexure A-9) relates to Stenographers Grade-II (formerly known as Personal Assistant) who had already opted for clerical cadre and ^{are} ~~we~~ are serving as Office Superintendent Grade-I on the date of promulgation of the rules. Thus, the Stenographers who were not working as ^{C S} ~~Stenographer~~ Grade-I on the date of promulgation of the Rules (of 1985), were not eligible for promotion to the post Administrative Office Grade-II. It is admitted fact that the applicant assumed charge as Stenographer Grade-II (i.e. P.A.) on 29.1.1986. It is, thus, seen that the claim of the applicant for promotion to the Administrative Officer Grade-II is not in accordance with rules as he was not eligible for the same.

9. The impugned letter dated 30.9.88 (Annexure 7) may represent a consequential action in regard to Stenographers Grade-II, but the same cannot be allowed with retrospective effect. As regards to the post of Office Superintendent Grade-I, the applicant had already exercised his option in January 1986 and the same was duly accepted by the respondents. More-over, we also find force in the arguments of the learned counsel for the applicant that

Recruitment Rules issued in exercise of the powers conferred by proviso to article 309 of the Constitution could not be amended by mere executive instructions. In view of this, the impugned order dated 30.11.1988 (Annexure-7) so far it denies consideration for promotion of the applicant to the post of Office Superintendent Grade-I, is not in accordance with law and is liable to be quashed.

10. The learned counsel for the applicant has also cited certain rulings in support of his claim which are discussed below :

(i) In the case of K.C. Arora & Another Vs. State of Haryana & others (1984) 3 SCC 281), their lordships of Supreme Court have held that accrued rights cannot be taken away by making amendment of the rules with retrospective effect. Here, in the present case, the amendment to the rule was yet to be made and only retrospective executive instructions were issued.

(ii) The applicant's counsel has also cited the judgment of Karnataka Administrative Tribunal in the case of S.V. Ramaappa Vs. State of Karnataka & others which also declared retrospective amendment taking away vested rights of the parties as invalid and void.

(iii) The observation in the decision of S. Govindaraju Vs. Karnataka S.R.T.C. & another (1986) 3 SCC 273) has also been cited to the effect that "once a candidate is selected and his name is included in the selected list ----- he gets a right to be considered for appointment as and

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when vacancy arised." This case is obviously distinguishable as the selection of the applicant for promotion by DPC was made much after the vacancy arose.

(iv) The observations of the Hon'ble Supreme Court has also been cited by the applicant in the case of State of Maharashtra Vs. Jagannath Achyut Karandikar (1989) 10 A.T.C. 593). But this case is distinguishable inasmuch as what is involved in that case was holding of an examination, whereas in the present case it is DPC meeting.

11. As regards the applicant's prayer that he be treated as promoted P.A Grade-II w.e.f. 17.12.1983, we do not find force in the same. Mere existence of vacancy from a particular date cannot give the right to applicant to promotion from that date. Like-wise delay in holding of the DPC meeting and issuance of the promotion order also does not give rise to any such right. Unless, ofcourse, there are other attendant circumstances. The promotion of the applicant will, therefore, be effective as already done from the date he assumed charge.

12. In the light of the foregoing discussions, we partly allow this O.A. and hereby quash the order dated 10.11.1989 (Annexure-13) and also order dated 30.11.1988 (Annexure-7) so far it denies consideration of the applicant for promotion to the post of Office Superintendent Grade-I. The O.A. stands disposed of in the above terms.

No costs.

MEMBER (J)

MEMBER (A)