

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

(1) O.A. No. 533/87

P.A. Mishra

Applicant

Versus

Union of India & others

Respondents.

(2) O.A. No. 67/90

V.S.L. Brivastava

Applicant

Versus

Union of India & others

Respondents.

Shri T.N. Gupta

Shri P.A. Sinha Counsel for the applicants.

Shri A.V. Brivastava-Counsel for Respondents.

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Hon. Mr. Justice U.C. Brivastava, V.C.

Hon. Mr. K. Odayya, Mem. Member.

(Hon. Mr. Justice U.C. Brivastava, V.C.)

These two applications are in respect of a particular section one party claiming the said post and the other claiming the same, pleading that the other one is not entitled to the same. Both the applications have been bunched together and are being decided together.

2. The applicant Shri P.A. Mishra filed the said application before the Tribunal which was allowed exclusively and prayed that the order passed by the Director General, A.P.S.O. Lucknow dated 11.4.86 be quashed and the A.P.S.O. through its Director General be directed to consider the applicant for the departmental selection for the post of A.P.S.O. (public tion) and the

respondent No. 2 be also directed not to revert the applicant as it would adversely affect him and would result in penal consequence pending departmental selection to the post of A.D.O. By amendment it has been prayed that the Tribunal be pleased to hold the addition of the qualification in the col. 8 of the impugned R&P Rules for promotion to the post of Assistant Documentation Officer (Publication) as arbitrary and the same be read down to the effect that the said R&P Rules be read ignoring the discriminatory part of the said col. 8 as the same is violative of Article 14 of the Constitution.

3. The applicant of the second application Sri V.S.L. Srivastava has challenged the promotion of the applicant in the first case on the ground that the respondent No. 2 has no right to promote an unqualified candidate according to Recruitment Rules even on adhoc basis. He has prayed that the order dated 21.8.87 and 12.7.89 permitting Sri P.K. Mishra to appear in the supplementary examination to the post of A.D.O. in A.D.O.O. be quashed and a suitable order or direction be issued to respondent No. 2 to revert Sri P.K. Mishra, on his substantive post of Chief Documentation Officer (ad hoc), and a further direction to be issued to respondent No. 2 to promote the applicant as A.D.O. on adhoc basis till such time the results of the selection conducted in this regard are not finalised and a directive be issued to

Respondent No. 2 to regularise the selected candidate
from 5.5.84 i.e. the date of enforcement of rules as the
delay of holding the selection is on their part.

4. The facts in brief are that Sri P.K. Mishra was
recruited as Junior Research Assistant (Documentation)
in April, 1965 in accordance with Recruitment and
Promotion Rules of Class III technical staff of the
Research Directorate in the Research Designs and Standards
Organisation and was promoted as Senior Research Assistant
(Documentation) in 1966 through departmental selection
Committee. His designation, vide memo dated 5.6.74 was
changed as Chief Documentation Assistant. The sri P.K.
Mishra was promoted as Chief Research Assistant (Documenta-
tion) in 1978 through departmental selection Committee
and after written and viva voce test. He was promoted on
ad hoc basis on 23.1.1984 as Assistant Documentation
Assistant (Library). This promotion on ad hoc basis was
pending finalisation and issuance of statutory rules
known as Research Designs and Standards Organization
(Group A and B) Recruitment Rules, 1984 (hereinafter referred
to as Recruitment Rules) which were published vide
notification dated 28.5.84. In column 8 of the Schedule
for the post of Assistant Documentation Officer, the
educational qualification has been prescribed as follows:

"But must possess at least Bachelor's degree or
equivalent diploma in library Science of a
recognized university or equivalent."

Prior to the said 13.8.88 no such qualification existed. As a result the selection committee was going on to take place in pursuance of the said notification the applicant Shri P.K. Mishra failed to appear in the exam, and subsequently he made certain representations and threatened his O.C. Chel to influence the rules itself. The applicant of the other application Shri V.S.S. Srivastava qualified in being B.Sc. H.Lic. Science and was posted as Chief Documentation Assistant (Grade B 2000-3200) in the office of A.S.S. and next higher post is of Assistant Documentation Officer (B 2000-3300) which post is a group B post. As per the notification of the applicant he is the senior most eligible candidate as per recruitment rules of 1984. A.S.S. vide order dated 13.8.88 made selection to the post of A.S.S. in A.S.S. immediately as per recruitment rules. In the mean time it appears that Shri P.K. Mishra was promoted to the post of A.S.S. on adhoc basis on 23.7.86 after the decision to make the appointment was made. As the said Shri P.K. Mishra was promoted on adhoc basis, respondent No.1 i.e. the Railway Board, ~~was~~ desired to know as why the unqualified person's adhoc appointment was made while the qualified persons were available. As the said Shri P.K. Mishra was not reverted, the process of selection also did not start and as per allegations because of pressure the respondent No. 2 who was the A.S.S.O. notified the selection and the said Shri P.K. Mishra was not qualified

for selection. The said selection was postponed to 14.15 July and again postponed to 11th September 1986 and then again postponed to 29.6.87 and 30.6.87. Fresh list of eligible candidates was circulated and the name of Shri P.K. Mishra was not mentioned ^{in it} as he did not fulfil the qualification. The applicant, who passed the examination was interviewed but the result of the same was not declared. It was thereafter that the said Shri P.K. Mishra filed the above mentioned application as his name was not included therein and this Tribunal passed the order that he should not be reverted and permitted to take the examination. But Shri P.K. Mishra did not appear in the examination and was on medical leave and the interim order was vacated on 19.1.87 and consequently examination took place on 24/25.8.87 and in the Supplementary examination he was allowed to appear although the interim order had already been vacated. The applicant made representation against the same and the supplementary examination was postponed and vide staff notice dated 9.2.89 the result of one post out of two was declared and one Ganesh Prasad was empanelled for the post of A.D.O. and he was posted even without holding the supplementary examination. Again supplementary exam. was notified on 24.7.89 and Shri P.K. Mishra was allowed in the same and he was interviewed but the final result has not ~~yet~~ been declared. The applicant has challenged the action of the respondents as first they

Wrongly promoted Shri P.K. Mishra on adhoc basis ~~and~~ when he was not qualified and this adhoc promotion after violating the recruitment rules, which came in force on 5.5.84 and they managed to continue him on the post and did not revert him despite the Board's directions and he was not qualified, nor there was any interim relief.

5. The facts, as stated above indicate undoubtedly the coming into force of the rules, without taking into consideration the qualification, the said Shri P.K. Mishra was promoted on adhoc basis despite Railway Board letter and he was not reverted and he was allowed to continue even if there was no interim order and supplementary test was taken. It may be that the respondents were interested in him. The case is not going to be decided merely because the respondents were interested in one particular person but on the ground whether Shri P.K. Mishra was qualified to be appointed, when the statutory rules in force provide that the qualified candidates are available and it is qualified candidates who should be given appointment failing which some arrangement can be made but in this case the rule, practice and principle has not been followed. On behalf of Shri P.K. Mishra it has been contended that notwithstanding that the earlier rules Shri P.K. Mishra should have been promoted on the post. A reference has been made to the case of P. S. M. Patel and others vs. State of U.P. and others (1987 SCC (105) 310) in which it has been held that

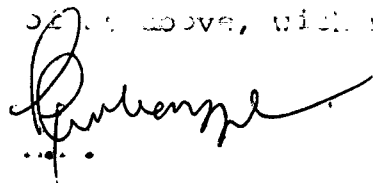
vested right cannot be taken away ^{by} retrospective amendment of statute or statutory rules arbitrarily and unreasonably-such amendments are subject to judicial review. The above case does not help the applicant Shri P.K. Misra in any manner. It is clear that it repeats the legal position. No one can claim promotion as a right but one can claim that he may be considered for promotion if the rules provide for the same and in the instant case it is not the case of either of the parties that the vacancy of which the selection was to be made, was existing as it existed before his appointment and in case appointment would have been the question of applicability of no rules would have arisen. The rules were made in 1986.

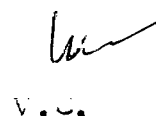
6. In the case of A. Chatterjee vs. Union of India and others (1990 L.C.C. (199) 231), wherein it was held that rule framed under Article 309 amended requiring engineering degree qualification for promotion from Mechanical Engineer (Senior) to Director (I.E.)-Consequently appellant a diploma holder in Engineering who was eligible under the unamended rule, was ineligible under the amended rule. It was held that the amended rule was valid. Merely because it adversely affected appellant's chance of promotion or his right to be considered for promotion, it cannot be said to have retrospective effect. Practically the same position arises in this case.

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7. It is always open to the rule can be amended or altered by a competent authority and rule can be challenged on a limited ground that it is arbitrary and violative of Articles 14 and 16 of the Constitution of India. In this case the rule is perfectly clear. The applicant Sri P.K. Mishra who is not qualified and eligible to hold the said post. He was ineligible and not being entitled to appear in the examination, there was no question of supplementary examination when the Interim order was also vacated and accordingly the application of Sri P.K. Mishra vs. Union of India. (U. 534/87) is dismissed and the respondents are directed to declare the result within a period of one month from the date of receipt of a copy of this order and in case the applicant of C.N.O. 67/90 succeeds, he will be given appointment against the vacancy for which examination took place and the result will be that he will occupy the post on which he is working.

8. With the above applications are disposed of as above, with no order as to costs.




V.C.

Locknow: Dated 4/8/92.

Shree/