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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

CIRCUIT SITTING AT NAGPUR

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T. A. No. 282/87

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DATE OF DECISION

8-10-90

Arvind Waman Gokhale & another PetitionerM.R.
Mr. Borkar

Advocate for the Petitioner(s)

Versus

Union of India and others RespondentMr. S. V. Gole for Mr. S. V. Natu

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P. S. Chaudhuri, Member (A)

The Hon'ble Mr. J. P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

O. S. Chaudhuri
 (P.S. CHAUDHURI)
 8/10/90 M(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

Tr.282/87

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1. Arvind Waman Gokhale,
Plot No.340,
Opposite Engineering College
Compound,
Abhyanker Nagar,
Nagpur.
2. Narayan Baliram Pant Dudhmande,
Plot No.274,
Shankar Nagar,
Nagpur. .. Applicants

vs.

1. Union of India
through
The Secretary,
Ministry of Finance,
New Delhi.
2. Comptroller and
Auditor General of India,
10, Bahadur Shah Jafar Marg,
New Delhi.
3. Accountant General(I),
Maharashtra,
101, Karve Road,
Bombay - 400 020.
4. Accountant General(II)
Maharashtra,
Civil Lines,
Nagpur - 1. .. Respondents

Coram: Hon'ble Member(A) Shri P.S.Chaudhuri

Hon'ble Member(J) Shri J.P.Sharma

Appearances:

1. Mr.M.R.Borkar
Advocate for the
Applicants.
2. Mr.S.V.Gole
(for Mr.S.V.Natu)
Advocate for the
Respondents.

JUDGMENT

(Per P.S.Chaudhuri, Member(A))

Date:

8-10-90

This application has come to the Tribunal
by way of transfer from the Nagpur Bench of the Bombay
High Court in terms of its order dtd. 21-10-1986,
under Section 29 of the Administrative Tribunals Act, 1985,

J. M.

in Writ Petition No.2303/83 which was filed before it on 27-9-1983.

2. Both the applicants(petitioners) were initially appointed as Lower Division Clerk in the office of the Deputy Accountant General, Posts and Telegraphs, Nagpur - applicant No.1 on 13-6-1949 and applicant No.2 on 6-9-1949. They were both transferred to the office of the 4th respondent in 1971. They were both promoted as Section Officers with effect from 31-3-1975 in the scale of Rs.500-900 with their pay being initially fixed at Rs.680/- in this scale.

3. By order dated 19-9-1979 a selection grade in the scale of Rs.775-1000 for Section Officers was introduced with effect from 15-9-1979. The terms and conditions governing this selection grade were detailed in the letter. Those relevant for our purpose are reproduced below:-

- "(i) The strength of Selection Grade shall be 10% of the posts, which have been in existence for three years irrespective of the fact, whether the posts are permanent or temporary.
- (ii) For becoming eligible to be considered for appointment to the Selection Grade an employee should have completed 14years service in Section Officer's grade or crossed 3/4th span of the scale of pay of the ordinary grade.

In this process, if a junior person becomes eligible by virtue of his reached 3/4th span of the revised scale in the ordinary grade, while a senior to him does not become eligible the junior will not get any overriding priority in the matter of consideration for appointment to the Selection Grade.

(iii) Promotion to Selection Grade in Section officers cadre will be on the principle of seniority subject to rejection of unfit. "

4. By an order dated 20-3-1980 certain clarifications were issued in this matter. Those relevant for our purpose are reproduced below:-

In the Ministry of Finance O.M. dated 24.10.78 it has been clarified that in respect of Selection grades to Group C and D posts any officer who has crossed 3/4th span of the revised scale of pay of the ordinary grade will be eligible for the grant of Selection grade, even if he does not fulfill the length of service condition i.e. 14 years. Thus any officer whose pay in the ordinary grade, has under any circumstances, crossed the stage in the time scale of the ordinary grade, appropriate to 3/4th span will become eligible.

This may, in certain circumstances, render officers junior in the seniority list of the ordinary grade, eligible for grant of selection grade prior to some seniors. It is clarified that the eligibility for grant of selection grade in Group C&D will be determined with reference to the criteria mentioned above, irrespective of the position in the

seniority list. Such eligibility will be determined initially on the date on which the Selection Grade is deemed to take effect, for example on 1.8.76 and the every anniversary thereof or on the date of D.P.C. hereafter even though the consideration of the D.P.C. may be on a subsequent date or dates. In preparing the list of eligible officers the crucial date will be such date of initial effect or such anniversary or the date of D.P.C. as the case may be, and any officer not eligible on the crucial date will not be included in the list of eligible officers, for the relevant D.P.C. even in cases where some of the officers left out are actually senior in the seniority list. The D.P.C. will prepare the panel on the basis of rejection of unfit and appointments to the selection grade made accordingly.

It is possible that in certain cases appointments to the Selection Grade has been made on the basis of seniority-cum-merit prior to the issue of the Department's O.M.No.22011/5/77 Est.(D) dated 30.12.77. Such appointments wherever made should be allowed to continue and should not be reviewed. Appointments made to the Selection Grade on or after 30.12.77 should be on the basis of seniority subject to the rejection of the unfit. Where however no appointments to the Selection Grade have been made till 30.12.77 and appointments are to be made after this date they should invariably be made on the basis of seniority subject to the rejection of the unfit.

Appointments to selection grades created under Ministry of Finance OM dated 10.1.77 do not result in the placement of the officers in a *different grade and their inter-se* seniority in the ordinary grade for the

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purpose of regular promotion to the next higher grade, will remain unaffected and will be the sole criterion for such promotion. Even in the cases of officers who were not found fit for appointment to the Selection Grade their seniority in the ordinary grade and eligibility for promotion to the next higher grade (other than this Selection grade) will not be affected thereby and their suitability for such promotion has to be determined afresh by the D.P.C. that would consider such promotion.

Consequently it is not necessary to maintain a separate seniority list of officers appointed to the selection grade created under Ministry of Finance order dated 10.1.77 nor is it considered necessary to frame separate recruitment rules for such selection grade posts."

5. It is the case of the applicants that they reached the stage of Rs.800/- in the scale of pay applicable to Section Officers, i.e. completed 3/4th of the span of the scale of pay, on 1-3-1980. They had thus become eligible for award of selection grade in the Section Officers cadre but seven other persons who reached that stage later on 1-4-1980 and 1-5-1980 were awarded selection grade for the sole reason that they were senior to the applicants in the cadre of Section Officers. The applicants contained that by reaching the stage of Rs.800/-, i.e. by completing 3/4th of the span of the scale of pay, on 1-3-80 they become entitled to the grant of selection grade and should have been granted

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this grade on 1-7-1980. They have therefore prayed for a direction to the respondents not to arrange the list of officers eligible for selection in the cadre of Section Officers on the basis of relative seniority and a further direction to the respondents to prepare such a list on the basis of reaching eligibility in the time scale irrespective of their seniority, so that persons reaching three-fourth span earlier, would be preferred for awarding selection grade over those reaching that stage later and connected consequential reliefs.

6. The respondents have opposed the application by filing their reply. We have heard Mr. Borkar, learned advocate for the applicants and Mr. S.V. Gole holding the brief of Mr. S.V. Natu, learned advocate for the respondents.

7. Mr. Borkar based his case on the premise that the rule of seniority could no longer be applied after the orders dated 20-3-1980 that we have quoted in detail earlier. It was his contention that by applying this seniority rule those who had earned eligibility on a later date had got only a short stopover in the selection grade before promotion to the next higher grade of Audit Officer whereas the applicants were required to stagnate in the ordinary grade. Thus seniors got fortuitous benefit

at the cost of the applicants which was not entitled when the selection grade was introduced.

8. After going through the relevant orders and hearing the arguments of the learned counsel on both the sides, we are of the view that the applicants' contentions are wholly misconceived. In the application the applicants have themselves brought out that a list for appointment to the selection grade is required to be prepared every year. 1st July is to be taken as the date for considering eligibility of persons to be brought on the list and the list so prepared remains in force from 1st July for one year to 30th June of the next year. Nowhere in the orders is it mentioned that normal seniority will be given a copy and, instead, seniority will be reckoned on the basis of date of completion of 3/4th span of the scale of pay. Further, nowhere is it mentioned that the persons have to be promoted to the selection grade in excess of the vacancies. A plain reading of the orders makes it quite clear that eligibility list is to be drawn up on 1st July every year and the seniormost selected candidates therefrom are to be promoted against the available vacancies.

9. In this view of the matter we see no merit in the application and are of the view that it deserves to be dismissed.

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10. This transferred application is accordingly dismissed. In the circumstances of the case, there will be no order as to costs.

J.P. Sharma (J.P.SHARMA) 17/9 (P.S.CHAUDHURI)
Member (J) Member (A)

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