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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 196/87
T.A. No.

198

DATE OF DECISION 29.5.1990

Narendra Kumar Bhutani Petitioner

Mr. B.N. Singhvi Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent


Mr. P.M. Pradhan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Kamleshwar Nath, Vice-Chairman.

The Hon'ble Mr. M.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No


(KAMLESHWAR NATH)

(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. 196/87

Narendra Kumar Bhutani,
A-5, Sanchar Flats,
Prabhadevi Telephone Complex,
College Lane, Dadar,
Bombay-400 028

..... Applicant

Versus

1. Director General,
Department of Telecommunication,
Sanchar Bhavan,
Ashoka Road,
New Delhi - 110 001.
 2. Union of India,
Secretary(T),
Ministry of Communication,
Sanchar Bhavan,
Ashoka Road,
New Delhi - 110 001.
 3. The General Manager,
Mahanagar Telecommunication Circle,
G.P.O. Building,
Bombay - 400 001
- Respondents

Coram : Hon'ble Shri Justice Kamleshwar Nath, Vice-Chairman
Hon'ble Shri M.Y. Priolkar, Member(A)

Appearances :

1. Mr. B.N. Singhvi,
Advocate for the
applicant.
2. Mr. P.M. Pradhan,
Counsel for the
Respondents.

JUDGEMENT

(Per Shri Justice Kamleshwar Nath, Vice-Chairman)

Dated : 29th May 1990.

This application under section 19 of the Administrative Tribunal's Act is for a direction to the respondents to appoint the applicant N.K. Bhutani in the Junior Administrative Grade of Telegraph Engineers Service, Class I from February, 1982 when he was superseded by officers junior to him. There is a consequential prayer for giving him appropriate

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seniority if the relief for appointment in the Junior Administrative Grade is granted.

2. The applicant was in service in the Posts and Telegraphs Department since 1961 and joined Telecommunication service Group 'A' in June, 1969. By order dated 9.8.1979 he was confirmed in the Senior Time Scale of ITS Group 'A' with effect from 1-3-1978 and was eligible for appointment to the Junior Administrative Grade (for short, JAG) since then. In 1980 he along with others was considered by the Departmental Promotion Committee (DPC) for promotion to the JAG but was not promoted although 68 persons had been placed on the panel. That panel was exhausted on 1-11-1980.

3. On 27-5-1981 he was promoted to JAG in ad-hoc capacity. He joined on 14-8-1981 as Deputy General Manager at Bombay in consequence of orders dtd. 27-5-1981.

4. The department made a requisition by letter dtd. 15-1-1981 to the Union Public Service Commission (UPSC) for making a selection for 85 vacancies of officers in the JAG. The DPC met from 10th to 12th February, 1982 but did not find the applicant to be suitable for promotion while several persons junior to the applicant were approved and were ultimately appointed to the JAG on 24-3-1982. The applicant, nevertheless, was continued to work in the

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JAG on ad hoc basis.

5. In a subsequent DPC dtd. 20.2.1984, however, the applicant was approved for regular promotion to the JAG ; consequently he is now holding a regular appointment in the grade.

6. The first grievance of the applicant is that the selection proceedings before the DPC between 10th and 12th of February, 1982 were illegal because the DPC clubbed the vacancies for the years of 1980, 1981 and 1982 which was contrary to the provisions of OM No. 22011/3/76-Estt(D) dtd. 24.12.1980 of the Department of Personnel and Administrative Reforms.

7. It is admitted that the criterion of promotion to the JAG is selection on merit. It is also admitted that according to the O.M. select lists for promotion have to be made on the basis of vacancies year wise ; vacancies for different years are not permitted to be clubbed. It is also admitted that the zone of consideration by the DPC consists of three times of the vacancies sought to be filled. It is also admitted that in the relevant seniority list, the applicant is at Sr.No.38.

8. There are no specific pleadings of the parties in the application/counter on the number of vacancies which were to be filled and which related

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to the years especially for 1980 and 1981. On our direction the opposite parties have produced before us the record containing the selection proceedings. Page 2 of the notesheet contains a statement of the vacancies for a period of one year. The note is dated 24.11.1980 and makes a proposal for making a panel through the DPC for 85 officers. Details of 86 vacancies are set out which mentioned three existing vacancies in JAG, two vacancies to be released on retirement of Members, three vacancies to be released on retirement in SAG. These are the 8 vacancies which could be said to relate to the period ending 31st December, 1980; the remaining vacancies related to retirement of officers in the JAG, creation of new posts in the JAG and SAG and deputation of officers from JAG.

9. It appears, therefore, as contended by the counsel for the opposite party, the number of immediately available vacancies could have been 8. Since the zone of consideration is three times the number of vacancies, not more than 24 persons could have been considered if the selection was confined for the vacancies ending on 31-12-1980 which could not have included the applicant as he stood at Sr.No.38.

10. The learned counsel for the opposite party has further argued that, for all practical purposes, the vacancies against which selection was proposed to be made could not be treated for the year 1980 because

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the duration was hardly two months and therefore the calculation of the vacancies at page 2 of the notesheet of the record was for one full year. It is emphasised that while processing the selection by the DPC, it is not practicable that vacancies in short period like two months may be dealt with independently, and therefore the statement of vacancies on the basis of which the selection was sought to be made was in fact for the year 1981. In our opinion, the contention stands to reason. The concept of calculation of vacancies yearwise should not be taken to the length of absurdity; for although technically it may be said that a vacancy on the last day of a year may pertain to that year but for all practical purposes it can only be taken into consideration with the vacancies for the substantial period of one year which may immediately follow. We, should therefore agree with the learned counsel for the opposite party that the selection sought to be made by the initial proposal of 85 vacancies in November/December 1980 could be treated to be a proposal for the year 1981.

11. Since no DPC met in the year 1981 the proposals against 85 vacancies could not make any progress. In consequence thereof, a requisition was made to the UPSC on 7-7-1981 for 90 vacancies. It was in that connection the DPC met on 10th to 12th

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February, 1982 and made its recommendations in which the applicant was not selected and appointments were made on 24-3-1982. We do not think that the applicant can make a genuine grievance that there has been a clubbing of vacancies for the years 1980-81 on the basis of which the DPC made its recommendations. It may be mentioned that the applicant had pleaded that vacancies for 1982 were also clubbed; that part of the case was given up at the time of arguments. We hold therefore that the DPC/Selection in question could not be challenged on the ground of clubbing of vacancies for different years.

12. The next grievance of the applicant is that out of 161 names which were forwarded to the UPSC for filling 90 vacancies, 43 names were of persons who had not completed 5 years of approved service in the senior time scale of Telegraph Engineers Service Class-I. The contention is that those persons were ineligible and therefore the selection violated Rule 28 of the said rules.

13. Rule 28 reads as follows :

" 28. Appointments to the Junior Administrative Grade in the Service shall be made by selection on merit from amongst officers ordinarily with not less than 5 years approved service in Senior Time Scale of Telegraph Engineering Service Class I, on the recommendations of a duly constituted Departmental Promotion Committee. Provided that such officers shall be permanent in Telegraph Engineering Service Class I."

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14. It is admitted by the opposite parties that those 43 persons had not completed 5 years of approved service, and emphasis is laid on the expression, "ordinarily not less than 5 years" in the rules. The contention is that having regard to the exigencies of the service, it had become necessary to bring into the zone of consideration some officers who had put in even less than 5 years approved service in the Senior Time Scale. The learned counsel for the applicant says that the expression "ordinarily" means "usually", though not always vide Corpus Juris Secundum Vol.67. He has also referred to the decision of the Supreme Court in R.R.Verma v. Union of India, 1980(2)SLR 335 which says that the provisions for relaxation of rules are not intended to be used in a routine manner but are for unforeseen and complex situation or situations of undue hardship to a particular government servant in order to do justice and equity to him. The learned counsel for the opposite party correctly says that this case is not concerned with relaxation of rules; Rule 28 itself contains a latitude in this regard in the light of the exigencies of the situation. It says that the expression under consideration may be appreciated in the light of the proviso thereto which says that the officers who may be considered for JAG

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must be permanent in the Telegraph Engineering Service Class I. The argument is that whereas the department is bound to take into consideration only those officers who are permanent, it is open to it to consider officers of less than approved service if the circumstances required, although ordinarily officers of not less than 5 years approved service are to be considered. In our opinion the contention of the learned counsel for the opposite party has substance. In this connection the explanatory note, Annexure 'A', to the letter dtd. 7-7-1981 whereby the UPSC was requested to submit a panel for 91 vacancies, is of considerable significance. Referring to the 43 persons in question the explanatory note reads as follows :

"But their names have been included in the proposed zone of consideration under the term 'Ordinarily' as appearing in the relevant portion of Recruitment Rules, as also on the consideration that their juniors are eligible and have been included in the said zone."

15. The inclusion of the 43 persons names therefore is sought to be justified not only because of the expression in question in Rule 28, but also because persons junior to them had been included in the zone of consideration. It will be remembered that the number of vacancies was 90 and the zone of consideration would be upto 270. It was confined only to 161. Despite the number being 161 one of the persons who had to be considered viz. Mohanlal, had put in only two years of approved service on 30.10.1978. The upshot is that there was dearth of available eligible officers.

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16. It may be mentioned that this plea has been specifically taken by the opposite parties in para 4 of the counter affidavit; the applicant has not tried to rebut it by a rejoinder. It appears to us therefore that the opposite parties had sufficient cause for including the names of these 43 officers in the zone of eligibility. Incidentally, the learned counsel for the opposite party had pointed out that out of those 43 officers only two Officers came to be selected, viz Ashok Golas at Sr.No.113 and Ramachandran at Sr.No.115. They were holding required appointment in the Senior Time Scale respectively on 24-12-76 and 19-1-1977. They were thus close to the prescribed ordinary period of 5 years.

17. No other points have been urged in this application. It may be mentioned that in the grading of the officers in the list of those in the zone of consideration, Annexure-I to the DPC minutes, the DPC assessed the applicant in the grade of "Good" whereas all the persons who were approved and placed on the panel, Annexure-2, were graded as "Very Good".

18. We may also mention that the learned counsel for the opposite party tried to contend that this petition was barred by time. He has said that the appointments on the basis of the DPC held on 10th and 12th of February, 1982 were made on 24-3-1982 which gave cause of action to the applicant whereas the present original application

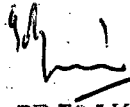
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was filed on 23-3-1987. Learned counsel for the applicant has pointed out that soon after the appointment dtd. 24-3-1982 the applicant made representation dtd. 5-4-1982 which were followed by other representations and ultimately the decision of the Government on those representations was taken on 11-7-1986. This petition therefore appears to be within limitation.

19. On the merits, however, this petition fails and is accordingly dismissed. The parties shall bear their costs.


(M.Y. PRILKAR)
Member (A)


(KAMLESHWAR NATH)
Vice-Chairman

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