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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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~~XXXXXXXXXX~~ BOMBAY BENCH

O.A. No. 472/88
~~XXXXXX~~

198

DATE OF DECISION 9-1-92

BHAGWAN SIRMAL LALCHANDANI Petitioner

MR. G.K. MASAND Advocate for the Petitioner(s)

Versus

UNION OF INDIA & 2 OTHERS Respondent

MR. V G REGE Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice U C Srivastava, Vice Chairman

The Hon'ble Mr. A.B. Gorthi, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *✓*
2. To be referred to the Reporter or not? *✓*
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? *a/*

MGIPRRND-12 CAT/86-3-12-86-15,000

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VICE CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN BUILDING" NO.6
PRESCOT ROAD; BOMBAY 400001

O.A. No.472/88

BHAGWAN SIRUMAL LALCHANDANI
Deputy General Manager
Currency Note Press
Nashik Road 422 101
(Maharashtra)

.. Applicant

V/s.

1. Union of India
through Secretary to
the Govt. of India
Ministry of Finance
Department of Economic Affairs
New Delhi
2. General Manager
India Security Press
Nashik Road
Maharashtra
3. General Manager
Currency Note Press
Nashik Road
Maharashtra

.. Respondents

CORAM: Hon.Shri Justice U C Srivastava, V.C.
Hon.Shri A.B. Gorthi, Member (A)

APPEARANCE

Mr. G K Masand
Advocate
for the Applicant

Mr. V G Rege
Counsel
for the Respondents

JUDGMENT

(PER: U.C. Srivastava, Vice Chairman)

DATED: 30.1.92

The applicant who is working in the Currency Note Press, Nashik as Deputy General Manager since 24.2.1986 feeling aggrieved by the amended recruitment rules which has resulted in depriving him from getting the promotional post of General Manager, Currency Note Press, Nashik, has approached the Tribunal praying that directions be issued to the respondents to consider the applicant for promotion to the post of General Manager, which is lying vacant since 10.1.1988 on the basis of the Recruitment Rules as they existed then and direction may also be issued to the

respondents to revise and amend the Recruitment Rules promulgated vide notification dated 16.2.1988 on the lines of the instructions contained in Government of India, Department of Personnel & Training O.M. dated 8.5.1987 read with O.M. dated 18.3.1988.

2. The pay scale of Deputy General Manager was earlier Rs.1800-2000 which is revised to Rs. 4100-5300 due to IVth Pay Commission recommendation. The applicant entered the service as Assistant Master (scale Rs.530-900) on 15-3-1967 which is a Class-I Gazetted post through UPSC. The advertisement for the said post provided promotional avenue for the post of Deputy Master and thereafter to the highest post in the organization which is Master in India Security Press and is redesignated as General Manager. After getting the intermittant promotions the applicant was promoted to the post of Deputy General Manager on 24.2.1986. Prior to the amendment rules of 16.2.1988 the qualifying condition for promotion to the post of General Manager was service of two years in the post of Deputy General Manager or combined service of five years as Deputy General Manager and Works Manager taken together. The applicant who was promoted as Works Manager on 30.7.1977 and Deputy General Manager on 24.2.1986 thus fulfills the pre-condition of 5 years regular service in the post of Works Manager on 30.7.1982 and combined regular service in the post of Deputy General Manager and Works Manager on 24.2.1986.

3. The Government of India owns 5 security presses viz., India Security Press, Nashik Road; Currency Note Press, Nashik Road; Bank Note Press, Dewas;

Security Printing Press, Hyderabad; and Security Paper Mill at Hoshangabad and all these presses have been classified as "Security Presses". The pay scale of General Managers of these five presses was different and the post of General Manager, India Security Press, Nashik, was considered superior post amongst the General Managers. The General Managers were discharging similar functions and hence the IVth Pay Commission prescribed a uniform pay scale for all the General Managers in the 5 security presses. The pay scale in place of Rs.2500-2750 was revised to Rs.5900-6700 with effect from 1.1.1986, and thus the posts of General Manager of other four security presses were upgraded. The IVth Pay Commission also recommended that the recruitment rules for the post of General Manager be reviewed. In view of the recommendations made by the IVth Pay Commission, the recruitment rules of 1988 were framed and prescribed and came into effect from 16.2.1988. Prior to the amendment of recruitment rules the post of General Manager, India Security Press, Nashik Road could be filled by promotion of Senior Deputy General Manager, India Security Press. The respondents have stated that with effect from 1.1.1986 the posts of General Manager of other four places are equated and brought on par with the General Manager, India Security Press and while framing and prescribing the rules under notification dated 16.2.1988 it was considered necessary to prescribe the conditions i.e., condition of having 5 years regular service in the grade of Deputy General Manager in order to make such Deputy General Manager eligible for appointment to the post of General Manager of 5 Presses. Obviously the vacant

posts were to be filled based on the new recruitment rules. The posts were vacant only one month and few days back of promulgation of new rules and as such according to the respondents as the new rules were in force the post of General Manager were to be filled in accordance with the new rules.

4. The applicant's grievance is that in view of the new rules the applicant has been deprived from the said post on the ground that he does not fulfil the requisite condition of five years service in the post of Deputy General Manager as on 10.1.1988. The applicant apprehending that he will be deprived of the promotion has approached the Tribunal. The applicant also cited the precedent earlier established for promotion to the post of General Manager which were made on the basis of pre 16-2-1988 rules without completion of 5 years service in the post of Deputy General Manager viz., that of (i) Shri P C Pant, Deputy General Manager, Hoshangabad and Shri S D Swamy, Deputy General Manager, Bombay.

5. According to the respondents these two instances are of no relevance as the appointment of Shri Pant was made from 9.1.1988 i.e., prior to the promulgation of the new rules under notification dated 16.2.1988 and so far as the post of General Manager, Security Paper Mill, Hoshangabad is concerned, the same fell vacant on or about 31.5.1987 and was filled in by appointing Shri Pant in the light of recruitment rules which were in existence on the date of his appointment. So far as the case of Shri S D Swamy is concerned it has been stated by the respondents that the post of General Manager, India Government Mint, Calcutta, is

governed totally by different rules and the process in regard to said appointment was also initiated on or about 18.5.1987 and has been completed in the light of the rules which were existing and were applicable to the post of General Manager, India Government Mint, Calcutta. He was appointed to the said post on 4.2.1988.

6. There is no dispute between the parties that appointment to the post of General Manager has not yet been made. A simple question that remains for consideration is that when the posts were vacant prior to the promulgation of new rules which were promulgated on 16.2.1988, whether the date for eligibility would be when the post fell vacant or when advertisement for the said post was made after coming into force of the new rules. Obviously under the new rules the applicant who otherwise was entitled to be promoted to the post of General Manager in preference to all other Deputy General Managers may not now be promoted in view of the fact that he lacks the basic eligibility criteria as prescribed in the new rules and others who in overall seniority are junior to him may get that promotional post.

7. The legal position is that the vacancy which was in existence before the publication of the new recruitment rules has to be filled in based on the old rules i.e., to the extent that at least the persons who were fully qualified or eligible for appointment when the vacancy arose, but the appointment was not made and the process of appointment was started after coming into force of the new recruitment rules that the person

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who was qualified earlier becomes disqualified so far as his qualifications are concerned due to the amended rules, it is obvious that the old rules are to prevail over the new rules and such person cannot be disqualified for the said post merely because the rules were amended subsequently. In this connection a reference was made on behalf of the applicant to the case of Y.V. RANGAIAH & OTHERS V. J. SREENIVASA RAO & OTHERS, 1983(3) SCC 385. In the said judgment it is held that the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. In that case it was admitted by Counsel for both the parties that henceforth promotion to the post of Sub-Registrar Gr.II will be according to the new rules on the zonal basis and not on the State-wise basis and therefore there was no question of challenging the new rules. In the said case those who were earlier qualified became disqualified under the new rules and the State Government considerably delayed the appointment for about one to two years when the vacancy arose.

8. The case of Rangaiah and other earlier cases were considered in the case of N T DEVIN KATTI V. KARNATAKA PUBLIC SERVICE COMMISSION & OTHERS, 1990(1) SCALE 659. In the said case advertisement was issued and it provided that selection shall be made in accordance with the existing rules or Government order, but the recruitment rules were amended retrospectively during the pendency of the selection. The question for determination before the court was whether the rules are applicable prospectively or retrospectively which largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement

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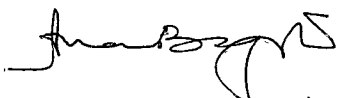
and the relevant rules and orders. The Court made it clear that if a candidate on making an application for a post pursuant to an advertisement does not acquire any vested right for selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and terms contained in the advertisement, he does acquire a vested right for being considered for selection in accordance with the Rules as they existed on the date of advertisement. We cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.

9. The position in this case appears to be that the rules may be on anvil in view of the recommendations of the Fourth Pay Commission but the applicant who otherwise in normal course would have been promoted and in case the vacancy was soon filled in before promulgation of new rules like in the case of Pant, the applicant would have been promoted. So far as the eligibility criteria prescribed by the new rules is concerned it has got prospective effect but the same would not deprive a person who was eligible to be promoted to the post when the vacancy arose and consequently the applicant is fully eligible for being promoted to the said post notwithstanding the fact that under the amended rules he may not fulfil the requisite eligibility criteria. Accordingly the applicant's candidature has also to be considered for the said promotional post like any other person notwithstanding the fact that he has not completed 5 years of service as provided in the rules, in view of the fact that under the rules as they existed when the vacancy arose he was fully eligible and qualified for promotion to the said post.

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10. Accordingly the respondents are directed to consider the candidature of the applicant for the said promotional post like any other candidate taking into consideration that he is fully eligible for the said post. In the circumstances of the case there would be no order as to costs.


(A B GORTHI)
MEMBER (A)


(U C SRIVASTAVA)
VICE CHAIRMAN