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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.No. 198
T.A.No. 70 of 1986

DATE OF DECISION 19-9-1986

Shri B.V.Hudlikar & 37 Ors. Applicant/s.

Mrs. Seema Sarnaik Advocate for the Applicant/s.

Versus

Govt. of India Press, Nasik Respondent/s.

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

CORAM:

The Hon'ble Member S.P.Mukerji
The Hon'ble Member(J) M.B.Mujumdar

1. Whether Reporters of local newspapers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether to be circulated to all Benches? *yes*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr. Application No. 70/86

Shri B.V. Hudlikar & Ors.,
 Govt. of India Press,
 Nasik.

.. Petitioners

V/s.

1) Union of India through
 The Manager,
 Govt. of India Press,
 Nasik - 6.

2) Dy. Director (Administration)
 Directorate of Printing,
 Govt. of India,
 New Delhi.

.. Respondents

Coram: Hon'ble Member S.P. Mukerji

Hon'ble Member (J) M.B. Mujumdar

Appearance:

1) Mrs. Seema Sarnaik,
 Advocate for the
 applicants.

2) Mr. S.P. Atre for
 Mr. P.M. Pradhan, Advocate
 for the Respondents.

JUDGEMENT: (Per Member S.P. Mukerji) Date: 19-9-1986

Shri B.V. Hudlikar and 37 others who are working as Compositors Gr. I in the Government of India Press, Nasik had moved the Hon'ble High Court of Judicature at Bombay on 16-7-1980 with a Writ Petition No. 1735/80 under Article 226 of the Constitution of India praying that the Office Memorandum dtd. 23-1-1980 prescribing Trade Test as compulsory for being retained in Gr. I Compositors pay scale and the Circular dtd. 14-2-1980 calling upon them to appear for the trade test may be set aside. The petition stood transferred to the Tribunal under Section 29 of Administrative Tribunals Act of 1985.

2. The brief fact of the case can be summarised as follows: The Government of India in 1963 appointed a Categorisation Committee which recommended that the Compositors should be categorised into (a) highly skilled and (b) skilled categories and suitable percentage of compositors should be graded to the highly skilled category with higher pay along with appropriate designation. Accepting the recommendation the Govt. of India created additional posts of Compositors Gr.I and distinguished them from the ordinary grade of Compositors designated as Compositors Gr.II. In the memorandum dtd. 18-4-1967 issued by the Office of the Chief Controller of Printing and Stationery it was laid down that the cadres of Compositor Gr.I and Gr.II were to be constituted from 1-1-1966 and that posts in Compositors Gr.I may be filled up "on the basis of seniority cum-fitness from the lower categories". It also stated that all appointments subsequent to the initial constitution of these orders would be made on the basis of trade tests and recruitment rules. In accordance with this order all the 38 petitioners were appointed to the Gr.I post carrying pay scale of Rs.150 - 285 w.e.f. 1-1-1966 and have been holding this grade continuously without any break. Also all the petitioners except the petitioners No.1, No.12 and petitioners No.31 to 38 were confirmed in Grade-I between 1-4-1970 and 12-1-1977. It appears that some Compositors who were not promoted as Compositors Gr.I at the time of the initial constitution went up to the Himachal Pradesh High Court with a writ challenging the grant of higher scale of pay to their senior merely on the basis of seniority cum-fitness and depriving them of the higher scale of pay merely because they were not higher in the seniority list. The High Court of Himachal Pradesh in Civil Writ No.61 of 1969 held that the grant of higher pay to the seniors and subjecting the petitioners in that scale to a lower scale of pay on the basis of mere seniority was not proper and legal. In the letters Patent Appeal No.14 of 1971 the Division Bench of that Court upheld the decision observing further ^{that} giving a higher scale of pay ~~on the~~ merely on seniority was against the policy of the Government as enunciated in the Ministry of Works Housing and Urban Development's letter No.15/4/66-OI(ii)

dtd. 14th March, 1966 (referred to and partly quoted in Exhibit 'E') The order of the Chief Controller, Printing and Stationery dtd. 18th April, 1967 (Exhibit 'A') laying down the principle of seniority cum-fitness for the purpose of promotion to Compositors Gr.I was also criticised in the appellate judgment. Pursuant to the decision of the High Court of Himachal Pradesh the

Director of Printing issued the impugned order dtd. 23rd January, 1980 (Exhibit 'E') in which it was laid down that "the only course left open to remedy the situation is to subject all the Compositors Gr.I who were due to be promoted and were so promoted w.e.f. 1-1-1966 and still in service in that grade to trade test to be held by the Manager of the respective press concerned" In implementation of this impugned order dtd. 23rd January, 1980 the Compositors Gr.I who were initially appointed on 1-1-1966 including the petitioners were called upon by the other impugned order dtd. 14-2-1980 to take the trade test. It is against these orders that the petitioners have come up to us.

3. We have heard the arguments of the learned Counsel for both the parties and gone through the documents very carefully. The learned Counsel for the petitioners have very persuasively argued that once the petitioners were appointed to Gr.I on 1-1-1966, at the time of the initial constitution, they cannot subsequently be subjected to a trade test by an order of 1980 to be given retrospective effect by 13 years. She also brought to our notice the judgment dated 14-12-1982 of the Kerala High Court in OP.No.2002/80E in which it was held that the petitioners in that case who had been confirmed as Compositors Gr.I were not bound to undergo trade test. We have gone through the judgements of the High Court of Himachal Pradesh dt. 21st May, 1971 in C.W.P. No.61 of 1969 as also the judgement in appeal No.14/1971 carefully as also the judgement of the Kerala High Court referred to above. The High Court of Himachal Pradesh has held that having made a clear distinction between Compositors Gr.I as in the highly skilled level and Compositors Gr.II as in only skilled level, awarding the higher scale of Gr.I on the basis of mere

seniority alone will be making an unreasonable distinction between Gr.I and Gr.II and is violative of Articles 14/16 of the Constitution of India and directed not to enforce this revised scale of pay in such a manner so as to subject the petitioner to a lower scale of pay. This was upheld in appeal also and as indicated earlier the Division Bench held that the order of the Chief Controller of Printing and Stationery dtd. 18-4-1967 as prima-facie violative of the Government of India's policy enunciated in the letter dtd. 14-3-1966 also and of this relevant provisions of the Constitution of India. The judgement of the Kerala High Court has not ^{been} gone into the merits of the facts and circumstances in which the judgement of the High Court of Himachal Pradesh was given. But it mainly relied upon the directions of the Ministry of Home Affairs in which the following had been stated :

"If the order of the confirmation was made in contraventions, of executive or administrative instructions, it cannot be set aside. Cancellation of confirmation in such cases would amount to reduction in rank without any fault on the part of the officer confirmed"

4. In view of the above directions the Kerala High Court indicated that the petitioners before them who had already been confirmed as Compositors Gr.I could not be subjected to undergo trade test.

5. We see considerable force in the line of arguments and analysis available in the judgement of the High Court of Himachal Pradesh. The Govt. themselves at the time of initial constitution of the Compositors Gr.I accepted the recommendations of the Categorisation Committee which apart from the fact that they recommended higher and more attractive pay scale for certain categories of Compositors clearly distinguished between Gr.I and Gr.II Compositors on the basis of professional skill. They designated the Gr.I Compositors as "Highly Skilled" and Grade II Compositors as "Skilled". Thus the basis of differentiation between the Gr.I and Gr.II was clearly less relatable to seniority and more on degree ^{of} professional proficiency and superiority. ...5/-

Trade Test would be the basic mode by which the professional superiority of Gr.I over Grade II is established. In that context the provision of a trade test in contradistinction from seniority, for elevation from the Gr.II to Gr.I is not only legally necessary but also professionally desirable.

6. The next point that arises is whether the provision of the trade test for screening officers for promotion to Gr.I could be relaxed at the time of initial constitution. The Chief Controller of Printing and Stationery had relaxed the policy of such screening through trade test as laid down by the Govt. of India in the letter dtd.14-3-66 by issuing the order of 18-4-67. The Govt. is fully within its rights to correct any instruction issued by the subordinate authorities when it finds that it contravenes a policy which has been clearly laid down by them earlier. The issue of such a corrective instruction becomes all the more pressing when there is a clear decision of a High Court upholding the policy and striking down the contrary instructions. We therefore find nothing wrong or irregular in the impugned order dt. 21st January, 1980. However, in its implementation the Govt. cannot take away certain basic rights which have accrued to the petitioners by the very efflux of time. As has been indicated by the Kerala High Court those Compositors who had been confirmed in the pay scale of Compositor Gr.I before the issue of the order dtd. 21-3-1980 could not be dislodged from the higher grade by giving retrospective effect to that order. Confirmation in a particular grade bestows substantive right to the grade which cannot be taken away unilaterally without giving a show cause notice to the persons affected by such order. It is also doubtful whether such a right can be taken away retrospectively by an executive order. In any case we are fully convinced that those who had been confirmed in the cadre of Compositors Gr.I before the issue of the impugned order dt. 21st January, 1980 cannot be called upon to take trade test on pain of being reverted from the substantive grade of Compositor Gr.I. We, however, feel that the same protection cannot be made available to those of the petitioners who have not been confirmed but are officiating as Compositors Gr.I although for a considerable period. Government has the sovereign right to lay down conditions of promotions, confirmatin etc. and an officiating incumbent to that post cannot claim a right of confirmation in that post unconditionally. This is more ...6/-


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so in case of confirmation in posts requiring professional skill. Since some of the petitioners have not been confirmed before the issue of the order dtd. 23rd January, 1980 the Government will be within its rights to call upon them to pass the trade test before Government is obliged to issue confirmation orders. It has been held by the Courts that Government has the right to change the conditions of service from time to time in public interest. We feel that it is in public interest to prescribe a screening test for those who have not yet been confirmed in the cadre of Compositor Gr.I.

7. In view of the facts and circumstances as discussed above we allow the petition in so far as the 28 petitioners that is those other than the ten Petitioners No.1,12, and 31 to 38 are concerned, to the extent of directing that they should not be called upon to take trade test as they have already been confirmed in Compositor Gr.I cadre. So far as the aforesaid ten petitioners are concerned that is Petitioners No.1,12 and 31 to 38, we direct that considering the long period of their officiation they should not be reverted if they pass in any of the four consecutive tests which may be held by the respondents hereafter. However, if these petitioners do not appear or fail to pass in any of the four consecutive tests,, then the respondents may revert them after the fourth test.

The petition is decided on the above lines.
There will be no order as to costs.


(S.P. MUKERJI)
MEMBER


(M.B. MUJUMDAR)
MEMBER (J)