

16

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

ORIGINAL APPLICATION NO.422/86

Shri Ganga Parkash,  
Works Manager,  
Currency Note Press,  
Nashik Road.

... Applicant

Vs.

The Union of India  
and others.

CORAM : HON'BLE JUSTICE SHRI U.C.SRIVASTAVA, Vice-Chairman,  
HON'BLE SHRI M.Y.PRIOLKAR, MEMBER(A)

Appearance:

Shri G.K.Masand, Adv,  
for the Applicant

Shri V.G.Rege, Adv,  
for the respondents.

JUDGMENT

DATED: 17-7-1991.

(PER : M.Y.PRIOLKAR, MEMBER(A))

The grievance of the applicant in this case is that though he became eligible from 9.4.1984 for promotion to the post of Works Manager, India Security Press, Nasik, by completing the requisite length of qualifying service of 10 years in the posts of Assistant Works Manager and Deputy Works Manager, one Mr.D.M.Sharma (Res.No.4) who did not fulfil this qualification of requisite length of service in the lower grades was promoted as Works Manager on adhoc basis vide Ministry of Finance order dated 18.4.1984 in contravention of the rules and orders of the subject. The prayer in this application is for a direction to the respondents to promote the applicant as Works Manager on regular basis with effect from 9.4.1984 with all consequential benefits.

12

2. In the present case, a clear ~~clear~~ vacancy of Works Manager occurred on 22.1.1983. It is not in dispute that the post of Works Manager is a Selection post, promotion to which is to be made by selection based on merit with due regard to seniority. It is also not in dispute that Shri Sharma was senior to the applicant in the post of Assistant Works Manager, having been ranked <sup>ed</sup> higher by U.P.S.C. in order of merit in the select list, though the applicant, having joined that post earlier than him, became the only eligible departmental candidate with 10 years' qualifying service as Assistant Works Manager for consideration for the post of Works Manager on 9.4.1984. /<sup>Mr.</sup>Sharma became so, eligible on 26.2.1985. According to the respondents, though a vacancy in the cadre of Works Manager continued to exist in 1984, in that year another vacancy of Works Manager was also anticipated, and it was considered desirable to hold a DPC for selecting candidates for appointment to both these vacancies. In the process, it became necessary to consider relaxation of the eligibility ~~criteria~~ <sup>criteria</sup> prescribed in the Recruitment Rules for the post of Works Manager. The decision on the relaxation question was taken by the Government of India in November 1984 and the DPC's recommendation became available in June 1985, in accordance with which Mr. Sharma who was ranked first came to be appointed as Works Manager on regular basis on 6.6.1985. The applicant was also subsequently promoted as Works Manager in the second vacancy on 24.2.1986.

3. The learned counsel for the applicant argued that the relaxation from the qualifying service of 10 years granted by Government in favour of <sup>Mr.</sup>Sharma was illegal as the power of the Government to relax any provision in the recruitment rules

18

was only "with respect to any class or category of persons" and not in an individual case. He relied in support of this contention on a judgment dated 26.11.1986 of the Principal Bench of this Tribunal in the case of R.C.Jha V Union of India (ATR 1989(1) CAT 272) in which it was observed that such relaxation in individual case is neither desirable nor permissible. The Supreme Court however, in a more recent judgment dated 20.2.1990 in the case of J.C.Yadav and others V State of Haryana and others (AIR 1990 SC 857), has observed as follows:

"The power of relaxation is generally contained in the Rules with a view to mitigate undue hardship or to meet a particular situation. Many a times strict application of service rules creates a situations where a particular individual or a set of individuals may suffer undue hardship and further there may be a situation where requisite qualified persons may not be available for appointment to the service. In such a situation the Government has power to relax requirement of Rules".

In the present case, the Department of Personal and Administrative Reforms had agreed to relaxation on the ground that "though the recruitment rules have not specifically provided that if a junior is considered the senior will also be considered, but DP and AR has been considering such cases sympathetically and allowing relaxation as and when asked by the Department to this effect. Hence we may have no objection for relaxing the eligibility conditions as a

one time measure in the present case". We are, therefore, of the view that the relaxation granted was valid and was not based on any extraneous considerations. In any case, since the meeting of DPC actually took place in May/June 1985 by which time Respondent No.4 had completed the requisite qualifying service, this argument can hardly be of any assistance to the applicant.

4. The applicant has also alleged malafides against the General Manager of India Security Press for proposing adhoc promotion and further continuance of <sup>Mr.</sup> ~~the~~ Sharma as Works Manager, ignoring the applicant's claim. But after perusing the relevant departmental record, we are satisfied that there is no evidence to substantiate this allegation of malafides. We find that the General Manager had sent a proposal to Ministry of Finance by his letter dated 6.2.1984 for ad hoc appointment of Mr. Sharma as Works Manager for a period of one year from 26th February 1984, Mr. Sharma being the senior most Dy Works Manager and the applicant not being eligible at that time. The General Manager had, however, fairly stated in that letter that in case relaxation of one year in respect of Mr. Sharma was not considered desirable, the applicant who was the second seniormost Dy Works Manager and who would be eligible for regular promotion as Works Manager from 9.4.1984, may be considered for promotion as Works Manager with effect from that date on adhoc basis. As the further processing and final decision were taken by the Ministry in Delhi, the General Manager of India Security Press, Nasik can hardly be accused of manipulation and favouritism as alleged by the applicant. <sup>therefore,</sup> We see no reason to interfere

(20)

-5-

with the adhoc or regular promotion orders of Respondent No.4 either on grounds of equity or of legality. The application is, accordingly, dismissed with no order as to costs.

*by M.Y. Priolkar*  
(M.Y. PRIOLKAR)  
MEMBER(A)

*U.C. Srivastava*  
(U.C. SRIVASTAVA)  
VICE-CHAIRMAN