

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 7th DAY OF SEPTEMBER, 1987

Present : Hon'ble Justice Sri K.S.Puttaswamy Vice-chairman

Hon'ble Sri L.H.A.Rege Member (A)

Application No.1730/86(F)

J.Semaiah,
Dy. Controller of Mines,
(M/o Steel & Mines),
Bangalore

... Applicant

(Sri Yoga Narasimha ... Advocate)

vs.

1. Secretary, Department of Mines,
(M/o Steel & Mines),
New Delhi.
2. Controller General,
Indian Bureau of Mines,
Nagpur.
3. Regional Controller of Mines,
Indian Bureau of Mines,
Bangalore.
4. Y.P. DUBEY,
Officiating Asst.
Controller of Mines,
O/o the Controller of
Mines, New Secretariate
Bldg, Nagpur-440001.

... Respondents

(Sri M.S.Padmarajaiah ... Advocate)

This application has come up before the Tribunal today. Hon'ble Justice Sri K.S.Puttaswamy, Vice-chairman made the following :

ORDER

In this application made under Section 19 of the Administrative Tribunals Act, 1985 ('Act') the applicant has challenged Office Order No.A.32013(4)/85-Estt-A dated 5.9.1986 (Annexure D) of the Controller General of Indian Bureau of Mines(Controller).

2. The applicant, who is a member of a Scheduled

Caste inter-alia holds the qualification of a Diploma in Mining Engineering awarded by Government Mining Institute, Gudur, Andhra Pradesh. He joined service on 30.8.1977 as an Assistant Controller of Mines ('AC') in the Deptt. of Indian Bureau of Mines, Government of India in conformity with the Indian Bureau of Mines (Class I and II Posts Recruitment) Rules, 1964 ('Rules') made by the President of India under the Provision to Article 309 of the Constitution. The next higher promotional post to the applicant under the Rules is Deputy Controller of Mines, (DCM) (vide item No.15 of the Rules).

3. The Rules were substantially amended by the Indian Bureau of Mines (Class I and II posts) Recruitment (Amendment) Rules, 1979 ('Amendment Rules') made on 21.4.1979 (published in the Gazette of India dated 5th May, 1979) which came into force from 5.5.1979. The Amendment Rules had stipulated the following qualifications as essential qualifications for appointment or promotion to the post of DCM.

"Essential :

- (i) Degree^{de} in Mining Engineering from a recognised University/ Institution or equivalent.
- (ii) 5 years' experience in Mining in metalliferous mines or a Government Department dealing with mines."

These Rules are prospective.


4. On 14.1.1985, the Controller, by his Memorandum No.A.32013/4/83-Estt.A. promoted and appointed the applicant as DCM in the then time scale of Rs.1200-50-1700 on an ad hoc basis for a period of six months with effect from 1.1.1985 till the official recognition is given.

from that date he assumes charge or till the officers recommended by the regular DPC join duty, whichever was earlier. In pursuance of this order of the Controller the applicant reported for duty at Bangalore where his services were continued by extending the term. From time to time. But on 5.9.1986(Annexure D) the Controller had informed that the term of the applicant as DCM had ceased from 13.5.1986, on the ground that his continuance and two others, who were similarly situated, had not been approved by Government. Hence this application.

5. The applicant has urged that his promotions and continuance in the Department should be regulated as the law stood on the day he joined service or by the Rules as they then stood.

6. In their reply, the respondents have urged that the applicant who did not possess the essential qualification of a Degree in Mining Engineering stipulated by the Amendment Rules, was found ineligible for promotion or appointment as DCM and therefore his ad hoc appointment made in the interest of public service, had been rightly discontinued.

7. Sri Yoga Narasimha, learned counsel for the applicant, contends that the promotion or appointment of the applicant made on 14.1.1985 and continued from time to time was a valid appointment and that the same should have been continued by making a regular selection and appointment as the Rules stood at the time the applicant joined service. In support of this contention, Sri Yoga Narasimha strongly relied the ruling of the Supreme Court, in




T.R.KAPUR & ORS -vs- STATE OF HARYANA & ORS. reported
in AIR 1987 S.C.415.

8. Sri M.S.Padmarajaiah, learned Senior Standing Counsel for Central Government, appearing for the respondents contends that under the Amendment Rules made by the President, which were prospective, the applicant was ineligible for promotion or appointment to the post of a DCM and his discontinuance or reversion as the case may be was legal and justified.

9. In his application, the applicant had not challenged the validity of the Amendment Rules. When the applicant had not challenged the Amendment Rules, this Tribunal cannot examine their validity at all. We must therefore proceed that the Amendment Rules are valid and govern the situation from 5.5.1979.

10. We have earlier extracted the Amendment Rules made by the President on 21.4.1979. On the terms of the Rules, a person to be appointed or promoted as a Deputy Controller of Mines must possess a degree in Mining Engineering with the other qualifications referred to in that Rules. The applicant did not possess a degree in Mining Engineering and therefore he was ineligible for appointment or promotion as a DCM.

11. It is true that the applicant had been promoted as Deputy Controller of Mines on an ad hoc basis notwithstanding the fact that he was ineligible. But that had been done in the public interest without reference to the eligibility and suitability with a specific condition to



displace him by a regularly appointed person under the Rules.

12. In the impugned order, the Controller had not stated that the appointment of the applicant had been discontinued for the reason that he did not possess a Degree in Mining Engineering. But, in their reply, the respondents have stated that as the main and primary reason for the discontinuance of the applicant as a DCM. Sri Padmarajaiah who struck to this reason stated that his was also the reason for the discontinuance of two others referred to in the impugned order. We accept this explanation of the respondents and hold that he had been discontinued or reverted from the post of a DCM as he was not eligible for appointment to that post.


13. A person who joins service can never claim the right that all his further conditions of service should be regulated as the law stood on the date of his appointment. One is no longer res-integra and is concluded by the Supreme Court in Air 1967 SC 1889 (Reshanlal Tandan vs. Union of India). In this case a Constitution Bench of the Supreme Court speaking through Ram^aswamy¹ had rejected this very contention in these words :

It is true that the origin of Government Service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere


agreement of the parties. The emoluments of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between the master and the servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond & Williams on Contracts as follows :

"So we may find both the contractual and status obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, contains also to that of status so far as the law itself has been fit to attach to this relations compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as these of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status."(Salmond and Williams on Contracts, 2nd edition, p.12).

On these principles this contention of Sri Yoganarasimha calls for rejection.



14. In Kapur's case, on which strong reliance is placed by Sri Yoga Narasimha, the facts in brief were these : Kapur and others who stood allotted to the State of Haryana under the Punjab Reorganisation Act, 1966 had joined service in the Engineering Department of the unified Punjab with certain qualifications that were then stipulated for promotion to the higher posts of Assistant Engineers and Executive Engineers. When they initially joined service and stood allotted to the State of Haryana, for promotion to the posts of Assistant Engineers and Executive Engineers, a Degree in Engineering was not one of the essential qualifications or the required qualifications which position was accepted by the Supreme Court in A.S.PARMAR vs. STATE OF HARYANA (AIR 1984 SC 643). But the State of Haryana to overcome the decision in Parmar's case, retrospectively amended the recruitment rules without obtaining the prior approval of the Central Government under Section 82 (b) of the Punjab Reorganisation Act, 1966, corresponding to Section 115(7) of the States Reorganisation Act, 1956. The validity of these amended recruitment rules was challenged by Kapur and others before the Supreme Court under Article 32 of the Constitution inter-alia on the ground that the State of Haryana had no right to amend the recruitment Rules to their disadvantage retrospectively without the prior approval of the Central Government. On an examination of that contention the Supreme Court upheld the same. But, that is not the position in the present case. A provision similar to Section 82 of the Punjab Reorganisation Act, 1966, or Section 115 of the States Reorganisation Act, is not found in the case of the applicant who had joined




Government of India Service. There is no question of any guarantee or protection to the applicant when he joined the service as in the case of the allottee under the Punjab Reorganisation Act or the States Reorganisation Act. Hence the ratio in Kapur's case does not really bear on the question. On the other hand, the question is concluded by the Supreme Court in Reshanlal Tandon's case.

15. On the foregoing discussions, we hold that the claim of the applicant that he should not have been reverted or discontinued from the post of DCM from 13.5.1986 has no merit and calls for rejection.

16. We have upheld the reversion of the applicant who is stated to be the only Scheduled Caste member holding the post of an Assistant Controller of Mines in the Department. If the Rules had not been amended in 1979, it is very likely that the applicant would have secured more than one promotion. But the Amendment Rules had made all the difference. If the Rules continue as they are then the applicant who joined service as an Assistant Controller had to retire in that very capacity only which will cause him great frustration and deny all opportunities for promotion. The claim of the applicant who is a member of Scheduled Caste, is a very hard case and calls for remedial measures at the hands of Government by suitably amending the Rules. We do hope and trust that Government will earnestly examine this question and suitably remedy the situation.

17. In the light of our above discussion, we hold this application is liable to be dismissed. We therefore dismiss this application. But, in the circumstances of



G.S.R. 565 - In exercise of the powers conferred by the proviso to article 309 of the constitution, the Indian Bureau of Mines, namely:-

1. Short title - These rules may be called the Indian Bureau of Mines (Class I and II posts) Rules, 1964.
2. Application - These rules shall apply to the posts specified in column 1 of the schedule.
3. Number, Classification, Scales of pay etc. - The number of the said posts, their classification and scales of pay shall be as specified in the columns 2 to 13 of the said schedule:

Provided that the age limit specified in column 6 of the said schedule for direct recruits of Scheduled Castes, Scheduled Tribes and other special categories of persons in accordance with the provisions of the Constitution shall be as specified in the said schedule.

4. Qualification:- (a) No person who has not then one wife living or who having a spouse of such spouse, shall be eligible for appointment to any of the said posts, and (b) no woman whose marriage is void by reasons of the husband having a wife living, shall be eligible for appointment to any of the said posts:

Provided that the Central Govt. may if satisfied that there are special grounds for

5. Power of relaxation:- Where the Central Govt. is of the opinion that it is necessary to relax the rules with respect of any class or category of person.

THE GAZETTE OF INDIA, APRIL 4, 1964, PART-II, Sec.3(1) F. 5

Recruitment Rules for Class-I and II posts in the Indian Bureau of Mines, Ministry of Steel, Mines and Fuel

S.No.	Name of post	No. of posts	Classification	Scale of pay	Whether Selection post or non-selection post	Age limit for direct recruits	Educational & other qualifications required for direct recruits
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19.	Deputy Controller of Mines.	15	G.S.S. Class I	Rs. 900-40-1100-50-1400	Non-selection	Below 40 yrs.	Essential:- (i) Diploma in Mining of the School of Mines and applied Geology, Dhanbad. (ii) Degree in Mining Engg. of a recognised University or Institution equivalent. (iii) About 6 years experience in a responsible position in mine or Govt. Deptt. dealing with mines. Qualifications relaxable at the discretion of the Commission in case of candidates otherwise well qualified.
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37.	Asstt. Controller of Mines.	16	G.C.S. Class-I	400-400-450-30-600-35-670-EB-35-950	Selection	Below 35 yrs.	Essential:- (i) Diploma in Mining of the School of Mines & applied Geology, Dhanbad. (ii) Degree in Mining Engg. from a recognised University or Institution equivalent. (iii) About 3 yrs. exp. in Metallurgical/mining/mining valuation/inspection/mining/underground survey and sampling, preparation of assay and estimation of reserves. Qualifications relaxable at the discretion of the Commission in case of candidates otherwise well qualified.
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Attested
K. S. Singh
22-9-86
Joint Secretary
Ministry of Steel, Mines and Fuel
Indian Bureau of Mines, Dhanbad

Annexure 'F'

2. the President hereby makes the following rules regulating the method of recruitment to Class-I and II posts in the
-sts) Recruitment Rules, 1964.

-ule here to annexed.
-sification, the scales of pay attached thereto, the method of recruitment, age limit and other matters relating there

-recruits may be relaxed (a) in the case of Govt. servants, and (b) in the case of candidates belonging to the
-lance with the general orders of the Central Govt. issued from time to time.

-ise living, ^{otherwise} in any case in which such marriage is void by reasons of its taking place during the life time

living at the time of such marriage or who has married a person, who has a wife living at the time of such

so ordering, ⁱⁿ except any person from the operation of this rule.

y or expedient so to do, it may, by order, for reasons to be recorded in writing relax any of the provisions of these

30.

es and Heavy Engg.

ications ts.	Whether age and educa- tional quali- fications pres- cribed for the direct recruits will apply in the case of promotees.	Period of probation if any.	Method of rectt, whether by direct rectt. or by promotion or by deputation/ transfer and percentage of the vacancies to be filled by various methods.	In case of rectt. by promotion, depu- tation/transfer, grades from which promotion, deputation/ transfer to be made.	If a D.P.C. exists what is its comparison.	Circumstances in which U.P.S.C. is to be consulted in making recruit- ment.
	9	10	11	12	13	14

Indian	No	2 yrs-	By promotion failing which by direct recruitment.	Promotion:- Asstt. Controller of Mines with 5 yrs service in the grade.	Class-I D.P.C.	As required under the rules.
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Not
applicable.

2 yrs.

Direct recruitment.

Not applicable

Not applicable As required under
the rules.

(No. 6/9/64 N III)

Sd/-

A. M. Kulshrestha,
Under Secretary.

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
@@@@@@@@@@@@@@@@

Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 25-9-87

APPLICATION NO 1730 /86(F)

W.P. NO _____

Applicant

Shri J. Somaiah

V/s The Secy, Dept of Mines, GOI & 3 Ors

To

1. Shri J. Somaiah
Deputy Controller of Mines
Indian Bureau of Mines
Industrial Suburb
Tumkur Road, Yeswanthpur
Bangalore - 560 022

2. Shri Yoga Narasimha
Advocate
146/3, Coconut Avenue
7th Cross, Malleswaram
Bangalore - 560 003

3. The Secretary
Department of Mines
Ministry of Steel & Mines
New Delhi

4. The Controller General
Indian Bureau of Mines
Govt. of India
New Secretariat Building
Nagpur - 440 001

5. The Regional Controller of Mines
Indian Bureau of Mines
Industrial Suburb
Tumkur Road, Yeswanthpur
Bangalore - 22

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/

~~INTERIM ORDER~~ passed by this Tribunal in the above said

application on 7-9-87.

Encl : as above

6. Shri Y.P. Dubey
Officiating Asst. Controller of Mines
Office of the Controller of Mines
New Secretariat Building
Nagpur - 440 001

7. Shri M.S. Padmarajaiah
Central Govt. Sng Counsel
High Court Building
Bangalore - 560 001

DEPUTY REGISTRAR
~~SECTION OFFICER~~
(JUDICIAL)

RECEIVED
Diary No. 203/CR/87
Date 28.9.87
Received 28/9/87

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

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Hon'ble Sri L.H.A.Rege Member (A)

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... Respondents

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O R D E R

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from that date he assumes charge or till the officers recommended by the regular DPC join duty, whichever was earlier. In pursuance of this order of the Controller the applicant reported for duty at Bangalore where his services were continued by extending the term. From time to time. But on 5.9.1986 (Annexure D) the Controller had informed that the term of the applicant as DCM had ceased from 13.5.1986, on the ground that his continuance and two others, who were similarly situated, had not been approved by Government. Hence this application.

5. The applicant has urged that his promotions and continuance in the Department should be regulated as the law stood on the day he joined service or by the Rules as they then stood.

6. In their reply, the respondents have urged that the applicant who did not possess the essential qualification of a Degree in Mining Engineering stipulated by the Amendment Rules, was found ineligible for promotion or appointment as DCM and therefore his ad hoc appointment made in the interest of public service, had been rightly discontinued.

7. Sri Yoga Narasimha, learned counsel for the applicant, contends that the promotion or appointment of the applicant made on 14.1.1985 and continued from time to time was a valid appointment and that the same should have been continued by making a regular selection and appointment as the Rules stood at the time the applicant joined service. In support of this contention, Sri Yoga Narasimha strongly relied the ruling of the Supreme Court, in



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10. We have earlier extracted the Amendment Rules made by the President on 21.4.1979. On the terms of the Rules, a person to be appointed or promoted as a Deputy Controller of Mines must possess a degree in Mining Engineering with the other qualifications referred to in that Rules. The applicant did not possess a degree in Mining Engineering and therefore he was ineligible for appointment or promotion as a DCM.

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14. In Kapur's case, on which strong reliance is placed by Sri Yoga Narasimha, the facts in brief were these : Kapur and others who stood allotted to the State of Haryana under the Punjab Reorganisation Act, 1966 had joined service in the Engineering Department of the unified Punjab with certain qualifications that were then stipulated for promotion to the higher posts of Assistant Engineers and Executive Engineers. When they initially joined service and stood allotted to the State of Haryana, for promotion to the posts of Assistant Engineers and Executive Engineers, a Degree in Engineering was not one of the essential qualifications or the required qualifications which position was accepted by the Supreme Court in A.S. PARMAR vs. STATE OF HARYANA (AIR 1984 SC 643). But the State of Haryana to overcome the decision in Parmar's case, retrospectively amended the recruitment rules without obtaining the prior approval of the Central Government under Section 82 (b) of the Punjab Reorganisation Act, 1966, corresponding to Section 115(7) of the States Reorganisation Act, 1956. The validity of those amended recruitment rules was challenged by Kapur and others before the Supreme Court under Article 32 of the Constitution inter-alia on the ground that the State of Haryana had no right to amend the recruitment Rules to their disadvantage retrospectively without the prior approval of the Central Government. On an examination of that contention the Supreme Court upheld the same. But, that is not the position in the present case. A provision similar to Section 82 of the Punjab Reorganisation Act, 1966, or Section 115 of the States Reorganisation Act, is not found in the case of the applicant who had joined



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17. In the light of our above discussion, we hold this application is liable to be dismissed. We therefore dismiss this application. But, in the circumstances of



the case, we direct the parties to bear their own costs.



Sd/-
VICE-CHAIRMAN
7/9/87

Sd/-
MEMBER (A) T. S. S. S.

an.

- True copy -

R. V. Venkatesh Reddy
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
25/9/87