

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated the 2nd day of January 1981

Before

THE HON'BLE MR.JUSTICE M.RAMA JOIS

WRIT PETITION NUMBER 5943 OF 1980

I.A.II FOR DIRECTIONS

R.SATHYANARAYANA RAO.

.. PETITIONER.

(By Sri V.A.Mohanrangam)

- Vs -

1. The Union of India, Government of India,
Ministry of Defence, New Delhi.
2. The Vice-Chief of Army Staff, MG-15 (a)
New-Delhi.
3. The Principal, Bangalore Military School,
Hosur Road, Bangalore.
4. Smt.V.Saroja.

.. RESPONDENTS.

To

R -

WHEREAS a Writ Petition filed by the above named
Petitioner under Article 226 of the Constitution of India, has
been registered by this Court.

Read I.A.II filed on 22.12.1980 by the Advocate for the
Petitioner for directions.

After hearing, the Court passes the following:

O R D E R

The Respondents are hereby directed that they may proceed
to make appointments specifically indicating in the appointment
order that the appointments are subject to the result of the
Writ Petition.

Issued under my hand and the seal of this Court,
this the 2nd day of January, 1981.

BY ORDER OF THE COURT,

ASSISTANT REGISTRAR.

Rs/5Cops. 6.1.81. 11.05 AM.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

DATED THIS THE 25TH DAY OF FEBRUARY, 1987.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And

Hon'ble Mr. P. Srinivasan,

.. Member(A)

APPLICATIONS NUMBERS 280 AND 1271 OF 1986.

R. Sathyanarayana Rao,
S/o late S. Ramachandra Rao,
Hindu, Aged about 45 years,
Assistant Master,
Bangalore Military School,
Hosur Road, Bangalore.
and residing in No. 612,
8th Block, 45th Cross, Jayanagar,
Bangalore-II.

.. Applicant in A.280/86.

H.S. Nagaraj, B.Sc., M.Ed.,
S/o late Suryanarayana Sastry,
Hindu, Aged about 45 years,
Assistant Master in Chemistry.
Bangalore Military School,
Hosur Road, Bangalore and residing
in the School Campus.

.. Applicant in A.1271/86.

(By Sri V.A. Mohanrangam, Advocate)

v.

1. The Union of India
represented by the Secretary to
the Government of India,
Ministry of Defence,
New Delhi.

2. The Vice-Chief of Army Staff,
MG 15(a), New Delhi.

3. The Principal,
Bangalore Military School,
Hosur Road, Bangalore.

Respondents 1 to 3
in both the applications.

4. Smt. V. Saroja,
Assistant Master,
Bangalore Military School,
Hosur Road, Bangalore.

.. Respondent-4 in A.P.280/86.

(By Sri M.S. Padmarajaiah, Standing Counsel)


These applications coming on for hearing, Vice-Chairman made the following:

ORDER

As the questions that arise for determination in these transferred applications received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act, 1985 ('the Act') are common we propose to dispose of them by a common order.

2. Sri R. Sathyanarayana Rao, applicant in Application No. 280 of 1986 corresponding to Writ Petition No. 5943 of 1980 with the qualification of Bachelor of Science with Physics as one of the major subjects joined service on 1-7-1963 as an Assistant Master in the Military Schools of Government of India. While in service, he acquired a post graduate degree called M.P.Ed in 1974. On 18-11-1977 the Central Board of Secondary Education ('Board') had granted permanent exemption to the applicant for teaching Physics to XI and XII Standards or P.U.C. (Exhibit-H). Smt. V. Saroja, respondent-4 possessing post graduate qualification in Physics who had been appointed as an Assistant Master later is junior to the applicant. But, still she has been promoted as Master (Gazetted) ('MG') on the ground that she was eligible and suitable for promotion and not the applicant on the view that he was ineligible for promotion to that post. On 24-3-1980 the applicant approached the High Court in Writ Petition No. 5943 of 1980 for appropriate reliefs.

3. Sri H.S. Nagaraj, applicant in Application No. 1271 of 1986 corresponding to Writ Petition No. 4195 of 1983 with the qualification of Bachelor of Science with Chemistry as one of the major subjects, also joined service in the Military Schools as an Assistant master in 1963. He later acquired a post graduate degree in Master of Education. He has also been granted permanent exemption by the Board on 18-11-1977 for teaching Chemistry to XI and XII standards or P.U.C.



On 28-2-1983 the applicant approached the High Court in Writ Petition No.4195 of 1983 for a direction to promote him to the post of Master (Gazetted) in Chemistry.

4. In their separate replies filed, the respondents have resisted these applications.

5. In B.C.SATYAN v.UNION OF INDIA AND OTHERS(Application No.717 of 1986 decided on 4-2-1987) we have traced the orders and Rules regulating the recruitment to the posts of MG of the Military Schools in various disciplines and the legal effect of permanent exemption granted by the Board, which is one of the questions that arise in these cases. In Satyan's case, we have dealt with a case of an Assistant Master in the discipline of Mathematics. But, that fact does not make any difference on that question and we, therefore reiterate our very reasoning and conclusions in Satyan's case on the same in these cases also..

6. In these cases, one other serious question that calls for determination is the validity of the note in the purported Rules made on 28-5-1966 noticed at para 5 of our order in Satyan's case. That note on which the respondents have sought to distinguish these cases reads thus:

NOTE: The qualifications are relaxable in exceptional cases in consultation with the Central Board of Secondary Education in the case of those Assistant Masters who joined service in King George's Schools prior to 31-12-1959.

In Application No.280 of 1986 the applicant has challenged the validity of this note as violative of Article 14 of the Constitution. We now proceed to examine the same first.


7. Sri V.A.Mohanrangam, learned counsel for the applicants contends that the benefit of exemptions granted to Assistant Masters who had joined service prior to 31-12-1959 and not to those that had

joined thereafter, did not satisfy the twin tests of a valid classification was arbitrary, irrational and was violative of Articles 14 and 16 of the Constitution. In support of his contention Sri Mohanrangam strongly relies on the ruling of the Supreme Court in D.S.NAKARA v. UNION OF INDIA (1983(1)SCC 305).

8. Sri M.S.Padmarajaiah, learned Central Government Senior Standing Counsel appearing for the respondents has urged that 'Note' extending the benefit only to those that had joined service prior to 31-12-1959 satisfied the twin tests of a valid classification and was not arbitrary.

9. In Satyan's case, Satyan who had joined service prior to 31-12-1959 had been granted permanent exemption and therefore, it was unnecessary for him to challenge the validity of the Note. But, in these cases, the applicants who have joined service after 31st December, 1959 have also been granted permanent exemption, which is not disputed by the respondents. In their reply filed in Application No.280 of 1986, the respondents except asserting that 31-12-1959 had been chosen as the cut off date and the same was not violative of Article 14, have not given reasons in support of the same. At the hearing Sri Padmarajaiah has urged that the same had been done to provide opportunities to those appointed later.

10. In D.S.Nakara's case a Constitution Bench of the Supreme Court dealing with the validity of the Liberalised Pension Rules extended only those that had retired on and from 1-4-1979 and not to those that had retired earlier, reviewing all the earlier cases again explaining the true scope and ambit of Article 14 of the Constitution, had found such a choice




was violative of that article both from the point of the traditional theory of classification and the new dimension of Article 14 viz., arbitrariness was the very antithesis of rule of law enshrined in that Article. We propose to examine the validity of the note in the light of the principles enunciated in Nakara's case without unnecessarily burdening our order with all the authorities.

11. The Rules made by the President under the proviso to Article 309 of the Constitution prescribing higher qualifications came into force on 27-8-1981 and before that, there were number of AMs with lesser qualifications appointed but had been granted permanent exemption with due regard to their long experience and ability is not in dispute. If that was the position, then the very classification of those appointed earlier to 31-12-1959 and after that date, appears to be too artificial and without any basis.

12. We will even assume that those appointed before 31-12-1959 and after 31-12-1959 belong to two different and well defined groups or classes and the same satisfies the first test of classification and examine whether the other and more important test of classification viz., whether the same has a rational nexus with the object sought to be achieved by the order made by Government on 28-5-1966 was achieved.


13. We have earlier briefly noticed the object of granting exemptions atleast till 27-8-1981 on which day the new Rules came into force and more fully in Satyan's case. When we critically examine the validity of choosing 31-12-1959 we find it impossible to find that the same has any rational nexus with the object sought to be achieved by the order made by Government on 28-5-1966 or any other order or rules of Government also.



14. On the foregoing discussion, we have no hesitation in holding that the terms 'after 31-12-1959' occurring in the Note do not satisfy the twin requirements of a valid classification and are violative of Article 14 of the Constitution.

15. We are also of the view that the denial of the benefit of exemption only to those appointed after 31-12-1959, though factually granted by the Board on the very fact situations of those appointed before that date is plainly arbitrary, irrational and offends the new dimension of Article 14 of the Constitution. Every one of the infirmities noticed by the Supreme Court in picking up 1-4-1979 as the date for grant of liberalised pension to only those who had retired from service on and from that date and not to those who had retired earlier, apply to the validity of the prescription made in the note. If at all there is any difference, the difference is only in the factual position being contrary to what was found in Nakara's case. In Nakara's case those who had retired earlier had been denied the benefit of liberalised pension. But, that position is reversed and had been granted only to those that had joined service before 31-12-1959 and not to those who joined service on and after that date. We are of the view that these facts do not really make any distinction and difference in applying the principles enunciated by the Supreme Court in Nakara's case.

17. On the foregoing discussion, we hold that the words 'prior to 31-12-1959' occurring in the note offending Article 14 of the Constitution are liable to be struck down. Even after that, the other portions of the note are perfectly operable and, therefore, can be allowed to stand.



18. With this we now pass on to examine the individual claims of the applicants before us.


R.Satyanarayana Rao, Applicant in Application No.280/1986.

19-1. From the proceedings of the DPCs and other records made available by the respondents we find that on 26-6-1973 there was no vacancy in the post of MG in the discipline of Physics and that no one had been promoted to that post on that date. Hence, as on 26-6-1973 the applicant can have no grievance.

19-2. On 27-5-1975 the DPC found that the applicant was ineligible for the very reasons set out at para 2 of its proceedings which we have extracted at para 14 in Satyan's case and promoted respondent-4 who was his junior. On 21-7-1980 the DPC again held that this applicant was ineligible for promotion. But, on that day no one in the discipline of Physics was promoted. On 17-8-1982 the DPC found the applicant ineligible and again promoted respondent No.4 and one Brajendra Singh.

19-3. On the conclusions reached by us on the validity of the note and on the ineligibility in Satyan's case, it necessarily follows that the decisions of the DPC and the appointing authority holding the applicant ineligible and thus not considering his case for promotion cannot be upheld by us. For the very reasons found in Satyan's case we should direct the consideration of the case of the applicant and respondent-4 afresh and make a fresh selection as on 27-5-1975 and on 17-8-1982.

19-4. From about July-August 1975 respondent-4 has been holding the promoted post of MG. Before a fresh selection is made which would necessarily occupy some time, it would be proper to permit respondent-4 to hold that post primarily in the interests of the



students and the public, without any right to claim for selection on that basis (See: GURNAM SINGH v. STATE OF RAJASTHAN (1971 (2) SLR 799 and VIJAYADEVARAJ URS, D v. G.V.RAO AND ANOTHER (1982(2) Karnataka Law Journal 97).

H.S.Nagaraj, Applicant in Application No.1271 of 1986.

20-1. The applicant in Application No.1271 of 1986 has not asserted that any one who is junior to him had been promoted superseding his legitimate claims. From the proceedings of the DPC held on 26-6-1973, 27-5-1975, 21-7-1980 and 17-8-1982, we find that there has been no promotion to the post of MG in the discipline of Chemistry. On and from 18-8-1982 also to date there does not appear to be any promotion to the post of MG in the discipline of Chemistry. If that was so, the question of this Tribunal directing the consideration of the case of the applicant for the post of MG in the discipline of Chemistry on any earlier date does not arise. On these fact situations, the only relief that can be granted to this applicant is to declare him eligible for promotion to the post of MG whenever a vacancy arises if he is within the range of selection.

21. In the light of our above discussion, we make the following orders and directions:

1. We strike down the words 'prior to 31-12-1959' in the 'Note' appended to the order or Rules made by Government on 28-5-1986 extracted at para 6 of this order.
2. We declare that the applicants were and are eligible for promotion to the post of Master (Gazetted) in their respective disciplines of Physics and Chemistry.
3. We quash the promotion of respondent-4 in Application No. 280 of 1986 and direct respondent-1 to consider the case of the applicant and respondent-4 in that application for promotion to the post of Master (Gazetted) as on 27-5-1975 and 17-8-1982 and promote either of them or both of them if they are found suitable for promotion extending all such consequential monetary benefits flowing therefrom, with all such expedition as is possible in the circumstances of the case and in any event not later than 31-6-1987. We make

make it clear that if the applicant in Application No. 280 of 1986 is found suitable and promoted on an earlier occasion, then the question of considering his case for promotion on a later occasion does not arise. But, till a fresh selection and appointment is made, we permit respondent-4 to hold the post she is holding without any right to claim for promotion on that basis.

22. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

23. Let this order be communicated to the parties within 10 days from this day.

VC. *[Signature]*
VICE-CHAIRMAN 25/2/87.

P. S. *[Signature]*
MEMBER(A). 25/2/87

np/