

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH :: BANGALORE.

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman,
and
Hon'ble Shri L.H.A. Rego, Member (Admn.).

Application No. 305 of 1986 (T)
(W.P. No. 19871 of 1980)

DATED THIS THE FIRST DAY OF JANUARY, NINETEEN EIGHTY SEVEN.

Between:-

T.K. Guha, Junior
Scientific Officer,
Electronics & Radar Development Estt.,
Ministry of Defence,
Bangalore.

.....Applicant.

and

1. Union of India,
by its Secretary,
Ministry of Defence,
New Delhi.
2. Director General of
Research & Development,
Ministry of Defence,
Research & Development Orgn.,
DHQ P.O., New Delhi.
3. U.P.S.C. by its Secretary,
New Delhi.
4. The Director,
LRDE, Bangalore.
5. A.K. Ohri, Major,
LRDE, Bangalore.
6. M.S. Ranganathan, Major,
LRDE, Bangalore.

....Respondents.

(Shri M.S. Padmarajaiah, CGSC, for R1 to R4)

This application having come up for hearing today before this Tribunal, Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman, made the following:

O R D E R

In this transferred application received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act, 1985 ('the Act'), the applicant has challenged the validity of Rule 8(1)(a) of the Defence Research and Development Service Rules, 1978 ('the Rules'), the promotions of respondents 5 and 6 as Senior Scientific Officers Grade-II ('SSO-II') now designated as Scientist 'B' and his non-promotion to the said post.

2. The applicant with the educational qualification of a pass in Matriculation and a Certificate in Draughtsmanship, joined service on 1.11.1944 as Draughtsman 'C'. He was promoted as Junior Scientific Officer ('JSO') on 4.11.1972. He has retired from service on 31.1.1983 on attaining superannuation.

3. The Defence Science Service in the Ministry of Defence was governed by the Defence Service Rules, 1953 ('the 1953 Rules') framed by the President under proviso to Article 309 of the Constitution. The 1953 Rules were repealed and replaced by the Defence Science Service Rules of 1967 ('the 1967 Rules'), which have been repealed and replaced by the Rules.

4. When the 1967 Rules were in operation, the applicant with the qualifications noticed by us was eligible for

promotion as SSO-II or Scientist 'B'. But the Rules have made him ineligible for promotion to that post. Rule 8(1)(a) of the Rules that changed the method of recruitment and prescribed higher qualifications for direct recruitment and promotions, had made the applicant ineligible for promotion from JSO to SSO-II and therefore he was not considered for promotion till he retired from service. Hence the challenge to this Rule.


5. The applicant has urged that Rule 8(1)(a) of the Rules had picked up in-service JSOs working as on 31.1.1978 for a hostile and discriminatory treatment and was violative of Articles 14 and 16 of the Constitution.

6. In justification of the Rules, the promotions of respondents 5 and 6 and the non-promotion of the applicant, respondents 1 to 4 have filed their statement of objections before the High Court.

7. Respondents 5 and 6, who have been duly served, have remained absent, and are unrepresented.

8. Shri T.K. Guha, the applicant, appeared in person and argued his case. Shri M.S. Padmarajaiah, learned Senior Standing Counsel for the Central Government, has appeared for respondents 1 to 4.

9. Shri Guha contends that Rule 8(1)(a) of the Rules had picked up in-service JSOs that had the necessary expertise and



had rendered long and distinguished service in the Department, which in all respects was equivalent to the superior qualifications prescribed for direct recruitment, was discriminatory and was violative of Articles 14 and 16 of the Constitution.

10. Shri Padmarajaiah contends that the rule prescribing higher qualifications to direct recruits and promotees, with due regard to the requirements of the Department, however, giving all chance to in-service JSOs, was not violative of Articles 14 and 16 of the Constitution.

11. Rule 8(1)(a) of the Rules, which is in challenge and material, reads thus:

" After the initial constitution of the Service has been completed by the appointment of officers in accordance with rule 7, vacancies shall be filled in the manner as hereinafter provided:

- (a) The posts in the grades of Scientist 'B' in various disciplines shall be generally filled by direct recruitment through an open competitive examination in accordance with the scheme of examination that may be approved in consultation with the Commission. The age limit shall be 26 years. Unless covered by any of the exceptions that may, from time to time, be notified by the Government in this behalf, no candidate shall be permitted to avail of more than three chances at the examination. However, all those who have been recruited before the promulgation of these rules as Junior Scientific Officers in the Defence ~~xxx~~ Research and Development Organisation on regular basis and possess the educational qualifications and experience

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as laid down for direct recruits, shall be eligible, till they are wasted out, for promotion to the post of Scientist 'B' upto 50 per cent of the vacancies in the grade. The selection for such promotions shall be made on therecommendations of the Assessment Board on the basis of:

- (i) confidential reports or interview, or both, or
- (ii) a limited departmental competitive examination followed by assessment of confidential reports or interview, or both.

In the event of a limited departmental competitive examination, all those existing departmental Junior Scientific Officers who do not possess the educational qualifications as laid down for the direct recruits shall also be permitted to take the examination and if they qualify and are further assessed fit by the Assessment Board, they shall, subject to approval by the Commission, also be eligible for promotion to the post of Scientist 'B'.

Provided further that the total number of posts filled in this manner in that grade shall at no time exceed 50 per cent of the total sanctioned strength for that grade on the date of promulgation of these rules. This concession shall also be admissible to those persons who are appointed or promoted as Junior Scientific Officers in the Defence Research and Development Organisation on regular basis on or ~~xxxxxx~~ after the date of promulgation of these rules, provided that-----

- (i) they are appointed as Junior Scientific Officer against posts which were advertised by the Commission prior to the date of promulgation of these rules;
- (ii) they are promoted as Junior Scientific Officers on the basis of therecommendations made by the Departmental Promotion Committee prior to the date of promulgation of these rules.


Provided further that it shall be open to the appointing authority to fill these posts by direct recruitment without ~~resortxxx~~ to the open competitive examination in consultation with the Commission."

This Rule, read with Sl.No.1 of Schedule III prescribes a second class Master's Degree in Science subjects, Mathematics or Psychology or second class Degree in Engineering, Technology or Metallurgy from a recognised University or their equivalents as essential qualification for direct recruitment to which a quota of 50% is earmarked. This rule prescribing qualifications for direct recruitment does not suffer from any constitutional or legal infirmities. Shri Guha also, in our opinion, very rightly, does not dispute this position.

12. The very educational qualifications prescribed to direct recruits are prescribed to the promotees also. While so doing, the Rule very rightly also provides for absorption of in-service JSOs on certain terms and conditions stipulated therein. We cannot, on principle or authority, hold that the various prescriptions made to the promotees are violative of Articles 14 and 16 of the Constitution.

13. On the foregoing discussion, we see no merit in the challenge of the applicant to Rule 8(1)(a) of the Rules.

14. Shri Guha next contends that respondents 5 and 6 and many others who were all B.Sc.s III Class and who did not possess the essential qualifications prescribed for direct recruitment, though junior to him had been promoted as SSOs without any reason or rhyme, and that a direction be issued to respondents 1 and 2 to extend him that very benefit.




15. Shri Padmarajaiah contends that the promotion of respondents 5 and 6 and others who possessed higher educational qualifications was done with the concurrence of the UPSC exercising the powers conferred by Rule 15 of the Rules and was valid and the applicant, who was only a Matriculate and was not a Graduate, was not entitled to that benefit at all.

16. Shri Guha does not dispute that respondents 5 and 6 and others who were junior to him were all B.Sc.s and that he is only a Matric.

17. We will also assume that Shri Guha is right in his submission that the authorities could not have exercised the power of relaxation under Rule 15 of the Rules in the case of promotees. But then also, we cannot come to the rescue of the applicant, that too at this distance of time, and grant him any positive and purposeful relief. If that is so, we consider it unnecessary to examine whether Government and UPSC were justified in exercising their power under Rule 15 of the Rules to promote respondents 5 and 6 and others. We, therefore, decline to examine this aspect.

18. In the light of our above discussion, we hold that the 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.


VICE-CHAIRMAN


MEMBER (Any)

Km/ds.