

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

3

OA.NOs. 172/90 and 178 to 183/90

1. Shri Vilas Ambadas Vaidya
2. Shri Ramesh Sohanlal Chourishi
3. Shri Pudugramam Vaidyanathan Ramchandran
4. Smt. Smita Subhash Erande
5. Shri P.T. Ohal
6. Smt. Nutan Sunil Satbhai
7. Shri Shivaji Chandulal Jakka

Applicants

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri M.R.Kolhatkar
Hon'ble Member (J) Smt. Lakshmi Swaminathan

Appearance

Shri A.V.Sonis
Advocate
for the Applicants

Shri R.K.Shetty
Advocate
for the Respondents

JUDGEMENT

Dated: 22nd Feb. 1994

(PER: Lakshmi Swaminathan, Member (J))

All these seven original applications raise common question of law and fact and have, therefore, been taken up together for judgement. The respondents have also filed a common reply in OA.NO. 172/90 in respect of all these seven applications.

2. The following facts are given below which are relevant to the cases. The seven applicants had joined Government service in India Meteorological Department at Pune in the post of Lower Division Clerk (LDC) on various dates between 6.4.1977 and 10.6.1981. The applicants' grievance is that Respondents Nos. 4 to 9, who were also LDCs, have been promoted to the posts of Upper Division Clerks (UDC) with retrospective effect vide order No.

completion of five
GE-345/12408, dated 8.12.1989 exactly on 4 years qualifying service from the date of their joining the service. According to the respondents, the Respondents Nos. 4 to 9 were promoted to the post of UDCs with retrospective effect in pursuance of the judgement of Central Administrative Tribunal, Principal Bench dated 10.3.1987 in Shyam Behari & Ors. vs. Union of India & Ors. through Secretary, Department of Civil Aviation & Ors. TA.NO. 886/86. The respondents have stated in their reply that the benefit of retrospective promotion had been given to LDCs promoted to UDCs but not to the LDCs promoted to the post of Senior Observers (SO), and that no junior to the applicants who opted on technical side had been promoted earlier than them to the post of S.O.

3. According to the Recruitment Rules under which the applicants had joined the department as LDCs, they were eligible for promotion to S.Os or UDCs after 5 years of service in the post of LDCs and they had to pass the Elementary Meteorological training within the prescribed time limit. At the time when they were recruited, the posts of LDCs and Observers ^{pay} carried the same scale. Their next promotional posts were to the grade of UDCs and S.O.s, which posts also carried the same ^{pay} scale. LDCs could be promoted as UDCs or as Senior Observers, and similarly Observers could also be promoted as either UDCs or as Senior Observers. A decision to bifurcate the Administrative Wing of the Department from the technical wing appears to have taken place in 1979. Thereafter, the rules had been amended vide G.S.R. 65 dated 31.12.1982. Pursuant to these rules, the Director General Meteorology ('DGM') had issued a notice to the technical staff to exercise option electing to either continue in the administrative side or to come over to the technical side. But LDCs who were

not treated as technical staff, were not given a similar option. The provisions in the 1982 Rules also raised the eligibility for promotion as UDC from a minimum of 5 years service in the feeder cadres to 8 years **service**. Being aggrieved by this provision, 42 LDCs had filed a Writ Petition in the Delhi High Court on 23.3.1983 which was later transferred to ^{the} Central Administrative Tribunal, Principal Bench and was decided on 10.3.1987.

4. After considering the rival contentions of the parties, the Tribunal directed that the respondents would take action to relax the said requirement of 8 years qualifying service to 5 years in respect of the applicants and held that "when relaxing the rules, we expect the respondents to give promotion to such of the applicants who are found eligible and suitable with effect from the date they completed 5 years of service, depending, of course, on the availability of vacancies in the UDC cadre." Regarding the question of giving options only to Observers and not to LDCs, the Tribunal further held that :

"..... Observers had no special technical qualifications, which made them more eligible to do technical work than LDCs. That being so, it was not fair to restrict the option, at the time of bifurcation, to Observers only. If LDCs like the applicant had not undergone Met.training at the time of bifurcation, it could be made a condition of exercising the option that they should undergo such training, if their option is to be acted upon, within a certain period, and to pass the examination at the end of the training. After all, even Observers have to undergo training only after they enter service and pass the examination thereafter. We would direct the respondents to extend the same option to the applicants also, subject to the condition that the applicants should undergo Met.training and pass the requisite examination.

The respondents will give the applicants the option either to continue on the administrative side or to work on the technical side, and the respondents may impose a condition that such of

the applicants who have not undergone Met. training should undergo such training and pass the examination within a certain period after the exercise of their option."

5. According to the respondents the LDCs who opted for the administrative side and were promoted to the post of UDCs had been given promotion from retrospective date in implementation of the directions of the Tribunal in the aforesaid case. However, they have stated that in the case of LDCs who had opted for the technical side, the same benefit was not extended to them when they were promoted as Senior Observers. It is precisely this question that has been agitated by the applicants in these seven OAs.

6. The seven applicants before us state that they have also executed the bonds that they will successfully complete the ^{Elementary} Meteorological Training during the 5 years as LDCs. It appears that in the case of the applicants the respondents have sponsored their names for training only in 1987, contrary to the conditions of the Bonds, after the decision of the C.A.T. in Shyam Behari's case. The delay in qualifying in the training is due to the respondents sending the applicants late for training and it is not related to any fault of the applicants. Apart from this, the Tribunal's judgement referred to the options being exercised by the concerned persons either to continue on the administrative side or to work on the technical side. By ^{applicants the} denying the same benefit of retrospective promotion ^{as given} to the LDCs who were promoted as UDCs meant that similarly placed persons were treated differently, resulting in violation of equality under Articles 14 and 16 of the Constitution. The applicants are, therefore, ^{entitled} to succeed.

7. The applicants also referred to the promotion of one Smt. M. Bandopadhyay who joined as LDC on 7.1.1983 and was promoted on 7.1.1988 as adhoc S.O. and regularised as S.O. on 20.3.1989, This fact also shows that the respondents have adopted a policy of pick and choose of LDCs who were given

the promotion of S.O.s vis-a-vis the seven applicants who had been appointed as LDCs earlier. In view of the order dated 8.12.1989, the applicants, therefore, claim promotion to the post of Senior Observers with retrospective effect, i.e. from a date on which each of them complete 5 years of service in the grade of LDCs on par with the 42 applicants who got their promotion from LDCs to UDCs. All the applicants have also stated that they have passed the Elementary Meteorological training which is a condition for promotion to S.O.s after they were sent for such training.

8. Our attention was drawn to the Explanatory Memorandum below the revised rules published in GSR-65 dated 15.1.1983. This Memorandum states that :-

"This amendment is consequential to the guidelines detailed in the Department of Personnel and Training Memorandum Number AB-14017/28/85-Estt.(RR) dated 7th December, 1985 and is intended to protect the interests of those Lower Division Clerks who were recruited before 15th January, 1983 according to which Lower Division Clerks with 5 and 2 years of service were eligible for promotion to the posts of Upper Division Clerk on the basis of seniority-cum-fitness and the Departmental competitive test."

The Memorandum also provides that "No one will be adversely affected by retrospective operation of this rule." The above Explanatory Memorandum cannot make a distinction between those who are promoted to the post of UDCs and those who are promoted to the posts of S.Os. By giving retrospective effect to the rules, it is not possible to adversely affect only the interests of LDCs who are promoted as S.Os. On this ground also the applicants are entitled to succeed.

9. In pursuance of this Tribunal's Order dated 22.3.1990 the applicants have been allowed to appear at the competitive examination for the post of Scientific Assistants but the results thereof have been withheld so far.

(10)

10. In the light of the above facts we allow the seven applications with the following order.

- (a) The respondents are directed to promote the applicants from the posts of Lower Division Clerks to Senior Observers on completion of qualifying service of five years and subject to availability of posts and according to seniority. They shall, be entitled to seniority from the date of promotion as above. However, their pay will be fixed rationally from the proposed date of promotion, but arrears of pay will be admissible only from the actual date of ~~of~~ their joining in the promoted post of ~~U.D.C.~~ ^{S.Os.}
- (b) The respondents shall declare the results of the competitive examination taken by these applicants for the post of Scientific Assistants. If the applicants have passed, they shall be considered for promotion to the post of Scientific Assistants based on the qualifying service as directed above.
- (c) There shall be no order as to costs.