

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(10)

Original Application No. 618/91

Transfer Application No.

Date of Decision 30.8.95

Shri H.S.Bisht & Anr.

Petitioner/s

Shri A.L.Kasturey

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

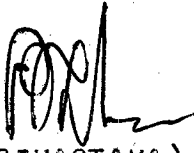
Advocate for
the Respondents

CORAM :

Hon'ble Shri. Justice M.S.Deshpande, Vice Chairman

Hon'ble Shri. P.P.Srivastava, Member (A)

- (1) To be referred to the Reporter or not ? No
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? No


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(1)

OA.NO. 618/91

Shri Harendra Singh Bisht & Anr. ... Applicants
V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri A.L.Kasturey
Advocate
for the Applicants

Shri V.S.Masurkar
Advocate
for the Respondents

JUDGEMENT

Dated: 20/8/95

(PER: P.P.Srivastava, Member (A))

The applicants No. 1 & 2 were appointed as Field Assistants in the year 1972 and 1974 respectively. After passing a Competitive Examination they were promoted as Assistant Marine Surveyor in September, 1980. Further, the applicants were promoted as Assistant Hydrographic Surveyor on adhoc basis in the year 1989 and they are continuing to hold the charge of post of Assistant Hydrographic Surveyor since then. The applicants have mentioned that the revised Recruitment Rules were issued by the respondents vide their letter dated 11.12.1989 which is placed at Ex-1 with the respondents' reply. According to these revised rules the qualification for promotion to the post of Assistant Hydrographic Surveyor, it was stipulated that the candidate must qualify in the Departmental Examination prescribed by the Ministry of Surface Transport to be conducted by Chief Hydrographer to the Government of India, Dehradun, and for this departmental



examination the qualifications were laid down that the candidate should have passed Matriculation or equivalent examination and must have at least Survey Recorder Ist Class from Indian Navy or Diploma in Civil Engineering. He should also have 7 years experience as Junior Hydrographic Surveyor. The case of the applicants is that in the old Recruitment Rules there was only one condition for promotion to the post of Assistant Hydrographic Surveyor that the candidate must have 7 years experience in the post of Assistant Marine Surveyor. The condition of having the qualification of Survey Recorder Ist Class from Indian Navy or Diploma in Civil Engineering, etc. was not there before the new Recruitment Rules came into existence on 11.12.1989. The applicants have submitted that since they were holding adhoc charge of the post of Assistant Hydrographic Surveyor before the new rules came into existence, they should be examined for regular promotion according to the old rules and their eligibility for promotion to the post of Assistant Hydrographic Surveyor must be considered in terms of the rules which were prevalent before the new rules came into being on 11.12.1989. Admittedly, the applicants have not passed the Survey Recorder Ist Class from Indian Navy or Diploma in Civil Engineering and therefore according to new rules they are not eligible to be considered for departmental examination prescribed by the Ministry of Surface Transport to be conducted by Chief Hydrographer to the Government of India, Dehradun. The applicants have submitted that by applying the new rules, the avenue of promotion for the applicants have been completely closed and unless they are sent for training for the course of Survey Recorder Ist Class from Indian Navy, they cannot appear for the qualifying examination conducted by the Department prescribed by the Ministry of Surface Transport.

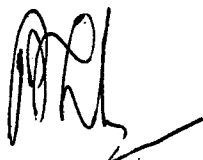


The applicants have, therefore, prayed that the revised recruitment rules dated 11.12.1989 communicated to the applicant on 12.3.1991 may be quashed and the examination which was held on 12.7.1991 according to the new rules may also be quashed.

2. The respondents have brought out that the rules dated 11.12.1989 have been framed in terms of the power conferred by the Article 309 of the Constitution of India and in supersession of the previous rules and any examination which required to be conducted after this date, i.e. 11.12.89 would have to be conducted in terms of these rules and since the applicants do not possess the requisite qualification, they are not being permitted to appear in the examination.

3. We have considered the matter and we are of the view that the respondents have a right to frame the rules and the rules dated 11.12.1989 cannot be considered illegal and have been validly framed. As far as the right of the applicant for being considered according to the provisions of the old rules for the purpose of promotion to the post of Assistant Hydrographic Surveyor is concerned, it cannot be acceded to as no material had been brought to our notice that the respondents have to conduct a periodic examination or that the posts which were existing prior to the date of the Notification dated 11.12.1989 were to be filled up according to old rules.

4. The counsel for the applicant has relied on Supreme Court judgement in Y.V.Rangaiah & Ors. vs. J. Sreenivasa Rao & Ors. reported in 1983 SC cases (L&S) 382.



The head note of the judgement shows that the panel in the case under consideration in the Supreme Court was not prepared within the time stipulated under the rules and instead^{was} drawn up after amendment of the rules for promotion and thereby it was held that the promotional chances of the eligible L.D.C.s were adversely affected and it was held that the vacancies in the promotional posts occurring prior to the amendment have to be filled up in accordance with the unamended rules. We have considered this judgement but this judgement is not of much help to the applicant as in this judgement the panel was not prepared within the time stipulated under the rules. The applicants have not brought out any material to our notice showing that there were any provisions under the rules for preparing a panel within the stipulated period.'

5. The counsel for the applicant has brought to our notice another decision of the Supreme Court in P.Ganeshwar Rao & Ors. Vs. State of Andhra Pradesh & Ors. 1989 SCC (L&S) 123. In this case the rules were challenged and it was stipulated that only substantive vacancies arising in the cadre shall be filled by direct recruitment and it was held that since the word 'arising' is qualifying the word 'vacancies' in the amended provision^{it} indicates prospective operation and therefore vacancies both substantive and temporary arising prior to the date of amendment not affected by the amendment would be governed by the old rule. We are of the opinion that this case also does not help the applicant as in this case also the rules specifically provided for the purpose of particular interpretation which were according to the



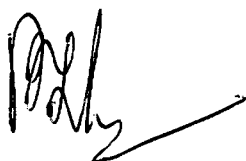
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facts and circumstances of that particular case.

No material has been brought to our notice to show that the vacancies prior to the new rules of 11.12.1989 are required to be filled-in in accordance with the old rules in the present case.

6. The applicant has pleaded that the respondents should have sent the applicant for the promotional post as stipulated in the rules for Survey Recorder 1st Class from Indian Navy so that ^{they} ~~he~~ could appear in the departmental examination prescribed by the Ministry of Surface Transport and thereby ^{they} ~~he~~ could become eligible to appear for the post of Assistant Hydrographic Surveyor. We find lot of substance in this pleading of the applicant. We are of the opinion that the respondents have the responsibility to provide channel of promotion to the applicant specially when the rules have been changed in 1989 which have completely blocked the promotional prospects of the applicants which were available to them prior to these rules.


7. The applicants have brought to our notice a Supreme Court decision, Council of Scientific and Industrial Research and Anr. vs. K.G.S. Bhatt and Anr., AIR 1989 SC 1972 wherein a similar question was decided and in Para 9 the Supreme Court has observed that the applicant in that case was left without opportunity for promotion for about twenty years. This is indeed a sad commentary on the said respondents. It is often said and indeed, adroitly, an organisation public or private does not hire a hand but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement



is a requirement for progress of any organisation.
It is an incentive for personnel development as well.
The Supreme Court further observed in the same para
that :

"There cannot be any modern management
much less any career planning man-power
development, management development etc.
which is not related to a system of
promotions. The appellant appears to
have overlooked this basic requirement
of management so far as respondent 1 was
concerned till N.R. and A.S. were introduced."

8. We are, therefore, of the view that it is the
duty of the respondents to provide facility to the
applicant by giving them opportunity to pass the
Survey Recorder Ist Class from Indian Navy. We,
therefore, direct that the respondents will nominate
the applicants to complete the Survey Recorder Ist Class
from Indian Navy so that they could appear in the qualifying
examination prescribed by the Ministry of Surface Transport.
The applicants should be nominated for this
course on the first opportunity which in any case should
not be later than six months ^{after} / the date of receipt of
this order. The OA. is disposed of with the above directions.
There will be no order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

mrj.