

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 424/92

Transfer Application No:

DATE OF DECISION 3-3-93

Shri S.M.Nandgaokar and Petitioner  
Ors Nagpur

Mr. D.S.Purandare Advocate for the Petitioners

Versus

Union of India through Secretary Respondent  
Ministry of Information and  
Broadcasting Wing All India Radio,  
Nagpur & Ors.

Mr.V.S.Masurkar Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y.Priolkar, Member(A)

The Hon'ble Shri V.D.Deshmukh, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

*My signature*  
(M.Y.Priolkar)  
Member(A)

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

(13)

O.A. No.424/92

Shri S.M.Nandgaonkar and  
Others, Nagpur. ... Applicants

vs

Union of India Through Secretary,  
Ministry of Information  
and Broad Casting Wing  
All India Radio, Nagpur  
& Ors. ... Respondents

Counsel: Hon'ble Mr. M.Y.Priolkar, Member(A)  
Hon'ble Mr.V.D.Deshmukh, Member(J)

Appearance:

Mr. D.S.Purandare for the  
applicants

Mr. V.S.Masurkar for the  
respondents.

Dated 3-3-93

Oral Judgement

(Per: Mr.M.Y.Priolkar, Member(A))

The applicants in this case who are Superintending Engineers are aggrieved by the revised recruitment rules notified on 26-4-1991 for the post of Chief Engineer Level (I) in the All India Radio, Ministry of Information and Broadcasting. These rules provide for a composite method of recruitment viz. by promotion/transfer on deputation which, according to the applicants, is illegal and arbitrary.

2. The learned counsel for the applicants argued that these revised rules are to the disadvantage of the departmental candidates which all along in the previous recruitment rules had been treated on par with the corresponding officers in the other Central or State Government departments. He alleged malafides on the part of the Chief Engineer of the All India Radio, for framing these recruitment rules in such a way as to keep the applicant No.1 out of consideration for promotion to this post, for having earlier approached this Tribunal and obtained a decision against the department.

3. It is well settled that framing of recruitment rules by defining the feeder cadres, the zone of consideration, the qualifications, the percentages for the departmental

candidates vis-a-vis direct recruits etc. are the prerogative of the executive, and so long as the decisions taken are not arbitrary or malafide, there should be no interference from the Courts or Tribunals. In view of the allegations of malafides we asked the department to produce the relevant notings in their files to see what was the provocation for revision of recruitment rules and whether the rules have been revised specifically with a view to keep out the applicant No.1 from the zone of consideration as alleged by the learned counsel. The relevant notings have been produced before us and we have perused them. It is clear that action for revision of recruitment rules had to be initiated because of the introduction of a new post of Chief Engineer (Level II) and the question of revision had been taken up for consideration right from 1989. This was long before the applicant No.1 had approached this Tribunal with some grievance against the department. In fact, from the notings, it transpired that the rules as drafted initially by the Chief Engineer against whom the applicant has alleged malafide were such as ~~applicant~~ would have permitted the consideration of the applicant No.1 for the promotion. It was only in the subsequent consultations between Ministry of Information and Broadcasting and Department of Training and Personnel, Ministry of Law and the Union Public Service Commission that various amendments to the draft rules were suggested and finally approved and which have been notified as "1991 Recruitment Rules". We have to hold therefore that the allegation of malafides is not at all substantiated in this case and has to be rejected outright.

4. The only prayer made in this application is to declare the recruitment rules dated 21-4-91 as ultra vires of Article 14 of the Constitution of India, and therefore

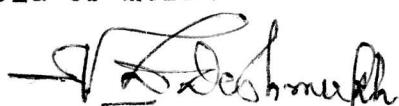
strike them down as illegal. It is well settled that framing of the recruitment rules is the prerogative of the Executive and this Tribunal will not interfere unless, it is a case of malafides or arbitrary decision. We have already held above that the allegation of malafides is unfounded. The only other ground on which the revised rules are attacked is that the departmental candidates are placed at a disadvantage as compared to non-departmental candidates with similar qualifications. In our view, departmental candidates are a separate category easily distinguishable from non-departmental candidates. Further the justification given is that a new promotion post of Chief Engineer Level-II is now available to the departmental candidates and it is not shown to us that such Chief Engineer Level -II posts are also available to non-departmental candidates. This allegation of discrimination against the departmental candidates is also therefore rejected.

5. The learned counsel for the applicant also prayed for the inspection of the notings in the departmental file which have been produced for our perusal. It may be noted that no such request for production of documents was made on behalf of the applicant at any stage during the proceedings. The respondents in their written reply have not relied on any of these notings. The directions to produce the notings had been given by us only to ascertain whether there was any substance in the allegations of malafides made on behalf of the applicant. The learned counsel for the applicant relied on a number of judgements in support of his prayer that documents should be produced for the inspection of the applicant. These judgements, are however, restrict the inspection of documents by the employees to only selection proceedings of DPC or ACRs of the official in question. The document asked for in

the present case is internal notings in the departmental files which we wanted to see for verifying the allegation of malafides and we have perused them. We do not think any useful purpose will be served by allowing the applicant at this stage to see notings in the departmental files. This prayer of the applicant is also rejected.

6. During the course of hearing the learned counsel for the applicant also prayed that we give the correct interpretation of the revised rules, particularly in view of the respondents' submission that para -1 of column - 12 of the recruitment rules deals only with the cases of transfer on deputation of non-departmental candidates and that departmental candidates will be governed only by para 2 of column 12. The point made is that para 1 of column 12 should also be applicable to cases of promotion and departmental candidates, being officers of Central Government, should also be considered for promotion under para 1 if they fulfil the eligibility conditions laid down therein. Admittedly, the applicant No.1 alone would have been eligible for consideration for promotion at this stage in case it is held that para-1 also covers the promotion of departmental candidates as officers of Central Government. Applicant No.1 has however since retired from service and no DPC has still been held or scheduled to be held for the selection to the post of Chief Engineer Level-I as per the revised recruitment rules. We find therefore that this prayer is premature. It will be open to the persons aggrieved to pursue their remedy ~~as~~ and when the rules are actually implemented to their disadvantage.

7. In the result the application is dismissed as devoid of merit with no order as to costs.

  
(V.D. Deshmukh)  
Member 9J

  
(M.Y. Priolkar)  
Member (A)