

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY
(CAMP NAGPUR)

Date of order : 10.7.1997

Pronounced at Mumbai on

O.A. No. 65/1993

ARUN SADASHIV INGLE, SENIOR PERSONAL ASSISTANT TO
THE ACCOUNTANT GENERAL (AUDIT)-II, MAHARASHTRA,CIVIL
LINES, NAGPUR , R/O 96, SAHAKAR NAGAR, KHAMLA-SONEGAON
ROAD, NAGPUR.

... APPLICANT
Vs.

1. UNION OF INDIA, DEPARTMENT OF PERSONNEL & TRAINING,
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND
PENSIONS, NEW DELHI - THROUGH ITS SECRETARY.
2. COMPTROLLER & AUDITOR GENERAL OF INDIA, 10, BAHADUR
SHAH ZAFAR MARG, INDRAAPRASTHA ESTATE, NEW DELHI.
3. ACCOUNTANT GENERAL (AUDIT)-II, MAHARASHTRA,CIVIL
LINES, NAGPUR.

... RESPONDENTS

For the Applicant Mr. M.K.Deshpande
For the Respondents Mr. R.S.Sundaram

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THE HON'BLE MR.M.R.KOLHATKAR, MEMBER (A)
THE HON'BLE MR.A.K.MISRA, MEMBER (J)

PER HON'BLE MR.A.K.MISRA :

The applicant has filed this O.A. with the prayer
that the Recruitment Rules referred to in this Application
at Annex.A-9, be struck down as they are discriminatory and
violative of Articles 14 and 16 of the
Constitution of India and applicant be granted promotion
to the post of Senior Personal Assistant (Group 'B')

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in the pay scale of Rs. 2000-3200 w.e.f. 30-7-90 and all consequential benefits accruing therefrom be also granted to the applicant including the increments and arrears of pay.

2. Notice of this O.A. was issued to the respondents who have submitted their detailed reply alleging therein that the Rules cannot be termed as discriminatory simply because they lay down different qualifications, conditions and criterias for promotion to the post of Sr. Personal Assistant (Group 'B') from amongst the candidates of various feeder cadres. Based on these conditions, no specific instance of discrimination has been cited by the applicant. The applicant cannot claim promotion without fulfilling the requisite conditions simply because a promotional post was lying vacant on a particular date. The O.A. deserves to be dismissed.

3. The applicant has filed rejoinder alleging that the post of Sr. Personal Assistant (Group 'C') is non-existent in the department. There are no recruitment rules for appointment to the said post. There are also no description of responsibilities attached to this post. The applicant has reiterated his stand.

4. We have heard the learned counsel for the parties and gone through the record.

5. The learned counsel for the applicant has argued that by prescribing conditions for promotion to the post of Sr. Personal Assistant in the grade of Rs.2000-3200, the departmental authorities have discriminated between two similarly situated candidates. In one case only two years experience on the post of Senior

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Personal Assistant (Group 'C') in the grade of Rs. 1640-2900 has been prescribed and in another case 7 years combined regular service as Senior Personal Assistant (Group 'C') and Manager (Typing Pool) and Personal Assistant has been prescribed. These two posts i.e. the post of Senior Personal Assistant (Group 'C') and the post of Manager (Typing Pool), carrying the same pay scale of Rs. 1640-2900. Thus, the applicant who was promoted as Manager (Typing Pool) w.e.f. 30.9.85 in the pre-revised pay scale of Rs.500-900 which was lateron equated with pay scale of Rs. 1640-2900 was refused promotion on the ground that he did not satisfy the eligibility criteria as on 1st Oct. 81 and thus has been discriminated vis-a-vis Senior Personal Assistant (Group 'C') who was required to have only two years experience in the grade of Rs. 1640-2900. Thus, the Rules creating such discrimination are required to be quashed. He has cited (1992) 19 ATC 94 C.G.Ghosh Vs. UOI and Ors. On the otherhand, it was argued by the learned counsel for the respondents that the administrative authorities of the department are quite competent to fix different conditions of promotion relating to persons belonging to different posts of feeder cadre. In the instant case, they have fixed the period of 2 years of regular service in respect of persons holding the post of Senior Personal Assistant (Group 'C') and 7 years regular service in respect of persons holding the post of Senior Personal Assistant (Group 'C'), Manager (Typing Pool) and Personal Assistants respectively. It has further been argued by the learned counsel for the respondents that duties of Senior Personal Assistant and Manager

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(Typing Pool) and Personal Assistant are different. There may be a chance that a person might have worked for some period on the post of Personal Assistant and thereafter on the post of Manager (Typing Pool) and thereafter on the post of Personal Assistant (Group 'C') post and thus he may not have completed two years regular service on the post of Senior Personal Assistant (Group 'C') but may have completed 7 years of combined service. To avoid such hard placed suitable candidates a combined regular service of seven years on all the three posts has been prescribed as condition for promotion. Therefore, it cannot be said that person belonging to one post has been discriminated as against the persons of another post. He also argued that if two pre-revised scales have been bracketed in one new pay scale that does not mean that persons belonging to two different pre-revised pay scales have been ~~equated~~. For the purposes of categorisation of pay scales different pre-revised pay scales may have been treated equal but this would not mean that the duties of two posts were similar. The applicant on a particular date when the promotional post fell vacant did not possess the requisite qualification of 7 years combined regular service and was, therefore, not eligible to be empanelled and promoted.

6. We have given our anxious consideration to the rival arguments. In the instant case the applicant has not cited any specific instance of discrimination. It has not been brought on record that a particular person possessing similar experience and qualification as the applicant, has been given promotion whereas the applicant has been denied promotion. Discrimination means treating similarly situated persons differently. In the instant case ~~any~~ person similarly situated

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as applicant has not been given promotion in preference to the applicant, therefore, there is no discrimination which could be made subject matter of discussion. So far as the promotion from the feeder cadre is concerned, it cannot be said that persons belonging to posts bearing similar pay scales are entitled to promotion simply because their pay scales have been ~~equated~~ in the new pay scale. In such cases it has got to be shown that two different posts bore similar duties to be discharged by the persons holding these posts. The applicant has not brought on record that Senior Personal Assistant (Group 'C') bearing the pay scale of Rs. 1640-2900 and Manager (Typing Pool) bearing the pay scale of Rs. 1640-2900 discharged similar duties. Therefore, the applicant cannot say that preferential treatment has been given to the person posted on the post of Senior Personal Assistant.

7. As said earlier, the authorities are free to prescribe different qualifications for promotion relating to the persons of different post of feeder cadre, therefore, the applicant cannot derive any benefit in respect of his promotion on this ground alone. The applicant was promoted as Stenographer Grade II/ Personal Assistant w.e.f. 27.4.84 and was subsequently promoted as Manager (Typing Pool)/Stenographer Grade-I w.e.f. 20.9.85. Thus, in category (ii) applicant completed 7 years experience only on 27.4.91 and was, therefore, rightly empanelled for promotion in the year 1991 and was rightly promoted w.e.f. 1.1.92.

8. In AIR 1964 S.C. 1179, the State of Madhya Pradesh Vs. Bhopal Sugar Industries Limited, the Hon'ble

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Supreme Court has laid down that "To make out a case of denial of the equal protection of the laws under Art. 14 of the Constitution, a plea of differential treatment is by itself not sufficient. An applicant pleading that equal protection of the laws has been denied to him must make out that not only he had been treated differently from others but he has been so treated from persons similarly circumstanced without any reasonable basis; and such differential treatment is unjustifiably made". Similarly in AIR 1970 SC 21, Western U.P. Electric Power and Supply Co. Ltd., Vs. State of U.P. and Others the Hon'ble Supreme Court has held that Article 14 of the Constitution ensures equality among equals : its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law".

Thus, in our opinion, no case of differential treatment or of discrimination has been made out by the applicant.

9. Time and again, it has been held by the Apex Court that a person is not entitled for promotion simply because he fulfills all necessary qualifications for promotion or a promotional post is lying vacant. All that has time and again been said by the Hon'ble Apex Court is that a person has a right to be considered for promotion. Promotion is not automatic without such

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consideration. Therefore, the claim of the applicant that he should have been promoted immediately on the following day the vacancy occurred on the promotional post, is not tenable. The departmental authorities have repeatedly informed the applicant that anomaly pointed out by him is under consideration of the higher authorities. In our opinion, anomaly in fixing the promotional criteria is no instance of discrimination unless two similarly situated persons have actually been differently treated. In the instant case if the anomaly as pointed out by the applicant is taken to be all correct even then it is for the departmental authorities to eradicate or correct the same. Unless ~~are brought on record~~ specific instances of such discrimination, the applicant cannot get the relief sought. In the instant case, no specific instance of discrimination has been brought on record by the applicant. The ruling cited by the learned counsel for the applicant is not applicable in the instant case. In the cited case the Northern Railway employees were granted benefits of certain allowances, therefore, it was held that employees of eastern Railways were also entitled to such benefits. Needless to say in the instant case, the applicant has not shown that any benefit has been given to any candidate ignoring the conditions for promotion and in preference to the applicant's claim, therefore, this ruling does not help the applicant.

10. In AIR 1994 SC 805, Union of India and Others Vs. S.M.Raja and Others, the Hon'ble Supreme Court has held that for purposes of promotion to the post of Head Clerk, Tax Assistants are treated at par with Upper Division Clerk. They are not given any

preference in the matter of seniority - same not unreasonable nor unjust. In this case, in order to mitigate the problem of stagnation intermediary cadre of Tax Assistants was created and few persons were promoted as Tax Assistants. But when the question of promotion to the post of Head Clerk arose it was held by the Hon'ble Supreme Court that the post of Tax Assistant cannot be treated as a senior post and thus the same was equated with the post of U.D.C. for purposes of promotion to the post of Head Clerk. In the instant case, Manager (Typing Pool), though was a senior post than Personal Assistant, it was not treated equal to the post of Senior Personal Assistant (Group 'C') while laying down the criteria for promotion. In our opinion, looking to the ruling propounded by the Hon'ble Supreme Court, the benefit by way of promotion to the applicant cannot be granted on the ground that the two posts i.e. Senior Personal Assistant (Group 'C') and Manager (Typing Pool) carrying the same pay scales.

11. In our opinion, the applicant has not been able to make out a case of discrimination, violation of Articles 14 and 16 of the Constitution of India and doctrine of equality, therefore, the O.A. deserves to be dismissed.

12. The O.A. is, therefore, dismissed with no order as to costs.

Sign
(A. K. MISRA)
Member (J)

M. R. Kolhatkar
(M. R. KOLHATKAR)
Member (A)