

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 184 OF 1994.

Dated this Tuesday, the 6th day of July, 1999.

CORAM : Hon'ble Shri Justice S. Venkataraman,
Vice-Chairman.

Hon'ble Shri S. K. Ghosal, Member (A).

Suresh Kumar Sood,
1, Gulmohar,
C.S.D. Estate,
Ghatkopar (West),
Bombay - 400 086.

... Applicant

(By Advocate - None present)

VERSUS

1. Union Of India through
The Secretary,
Ministry of Defence,
Government of India,
Defence Ministry AHQ,
New Delhi - 110 011.
2. Chairman & General Manager,
Canteen Stores Department,
"Adelphi", 119 M.K. Road,
Bombay - 400 020.
3. The Secretary,
Board of Central Canteen
Services, Block L-1,
Room No. 19, Church Road,
New Delhi - 110 001.

... Respondents.

(By Advocate Shri R. R. Shetty for
Shri R. K. Shetty).

ORDER (ORAL)

PER.: SHRI JUSTICE S. VENKATARAMAN, VICE-CHAIRMAN.

The applicant was promoted as Assistant General Manager w.e.f. 05.05.1982. He became eligible for promotion as Deputy General Manager by 1987. The applicant's case

Although there were vacancies, he was promoted on the basis with few break. By office order dated 04.03.1989 a new procedure for selection, namely - evaluating the Rs. on the basis of minimum Bench mark was introduced by O.M. dated 21.03.1990. According to the applicant, the new procedure cannot be applied to fill up the vacancies which arose earlier and against which he had to be considered. On the basis of the recommendations of the U.P.S.C, Annexure C-3 order dated 09.03.1994 has been issued promoting some of the juniors as Deputy General Manager adopting new procedure for selection.

2. By S.R.O. 99 dated 07.05.1988 the Recruitment Rules were amended by providing a quota to fill up the post of Deputy General Manager and as per that rule, two posts had to be filled by promotion and one post had to be filled by deputation. According to the applicant, though this rule was prospective, the respondents have given it retrospective effect and that by doing so, three vacancies which should have come for promotion have been lost and that if those vacancies were available, he would have been selected for one of those posts. The applicant has filed this application for a direction to the respondents to promote him to the post of D.G.M./R.M. without reference to any D.O. and to give him continuity in service or in the alternative, to declare that the order dated 10.03.19 and 30.06.1989 are illegal and for quashing the same. He has also sought for a declaration that he is entitled to regular promotion from the date of his adhoc motion in existing regular vacancies without reference to the Bench Mark. By way of amendment he has also sought for a declaration that the quota rule has no applicability for the recruitment or appointment for promotion prior to 1988 and as

consequences, strike down the promotion order dated 09.03.1994.

3. The respondents have contended that the application is barred by time. They have also pleaded that D.P.C. could not be held from 1982 to 1988 for want of recruitment rules, that thereafter due to various representations and Court stay orders the D.P.C. could not be held till 16.02.1994, that in the D.P.C. held on 16.02.1994 the applicant's case was considered for vacancies from 1982 to 1990, that officers who had secured Bench Mark "Very Good" and above have been selected for five posts. They have also contended that the Statutory Rules of 1988 have been given retrospective effect from 1982.

4. Without going into the question of ^{limitation} jurisdiction raised by the respondents, we are of the opinion that this application can be disposed of on merits.

5. The first objection of the applicant is that the procedure prescribed for selection under O.M. dated 28.06.1989 should be applied only in respect of vacancies which arose subsequent to that date and not for vacancies which arose earlier to that date⁴, based on the doctrine that statutory rules will have to be applied with regard to vacancies arising after the date of the rules coming into force and not for vacancies which arose earlier to that date. Whether the O.M. prescribing the procedure for selection can be treated as statutory rules is debatable. Even assuming that such instructions can be treated as statutory rules, the proposition referred to above is not an absolute proposition. It is well settled

that even statutory rules can be given retrospective effect if the rules stipulates so, unless some vested right is taken away. In the instant case, the O.M. in question specifically stipulates that the revised procedure is to be observed by all the D.P.Cs held after 01.04.1989, irrespective of the date(s) of occurrence of vacancies. In view of this specific provision that irrespective of the date of occurrence of the vacancies the new procedure has to be applied, it ^{is clear} does not mean that the procedure is given retrospective operation. As such, there is nothing illegal or irregular in the respondents adopting that procedure in the D.P.C. which was held on 16.02.1994. The applicant had no vested right to hold the post which he was occupying on adhoc basis and as such, the question of the above instructions taking away the vested right does not arise.

6. The D.P.C. has considered the applicant's case also and because he did not secure the prescribed Bench Mark, he has not been selected. There are no grounds to quash the D.P.C. proceedings or its recommendations.

7. With reference to the ^{other} above contentions raised by the applicant, it is no doubt ^{the} approved that the Lucknow Bench in its judgement in Ram Babu V/s. Union Of India & Others [O.A. No. 146/89 disposed of on 31.07.1991] has held that as S.R.O. 99 of 07.03.1988 (correct date is 07.05.1988) had only prospective operation and that it could not have been given retrospective

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operation so as to affect vacancies which had arisen prior to that date. But the respondents have produced the S.R.O. No. 143 dated 05.07.1991 published in the Gazette of India dated 27.07.1991 by which the rules of 1988 have been amended by including a clause that those rules shall be deemed to have come into force on the 14th day of April, 1982. This amendment has taken place after the judgement of the Lucknow Bench. In view of this amendment, it can no longer be contended that the 1988 Rules could not have been applied with regard to the vacancies which arose prior to 1988. Thus we find that the reliefs now sought for by this application cannot be ^{granted} sustained.

8. For the above reasons this application is dismissed. No costs.

(S. K. GHOSAL)
MEMBER (A).

(S. VENKATARAMAN)
VICE-CHAIRMAN.

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