

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 189 of 1998.

Dated this Thursday, the 27th day of June, 2002.

Shri Pradip Sarkar & Another _____ Applicants.

Shri G. K. Masand, _____ Advocate for the
Applicants.

VERSUS

Union of India & Others, _____ Respondents.

Shri V. G. Rege, _____ Advocate for the
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri Shankar Raju, Member (J).

(i) To be referred to the Reporter or not ? *Yes*

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? *No*

(iii) Library ? *No*

(B. N. BAHADUR)
MEMBER (A).

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CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri Shankar Raju, Member (J).

1. Pradip Sarkar,
Chief Engineer,
India Security Press,
Nasik Road.
Residing at - Greystone,
Bungalow No. 34, ISP Estate,
Nasik Road - 422 101.

2. Dinesh Kumar,
Chief Engineer,
Currency Note Press,
Nasik Road, Nasik.

Applicant

(By Advocate - Shri G. K. Masand)

VERSUS

1. Union of India through
The Secretary,
Ministry of Finance,
Department of Economic Affairs,
New Delhi.

2. General Manager,
India Security Press,
Nasik Road.

3. General Manager,
Currency Note Press,
Nasik Road.

Respondents.

(By Advocate Shri V. G. Rege)

ORDER (ORAL)

PER : Shri B. N. Bahadur, Member (A).

Through this O.A. two Applicants have come up to the Tribunal seeking directions/orders to the Respondents to consider their claim for promotion to the post of Deputy General Manager



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at India Security Press/Currency Note Press at Nasik Road, and if necessary, to amend the Recruitment Rules for the purpose. Both Applicants are Chief Engineers in the respective organisation under Respondents, namely - India Security Press and Currency Note Press.

2. The grievance of the Applicants is, that incumbents to the post of Chief Engineer are not eligible, as per the Recruitment Rules operating, for promotion to the post of Deputy General Manager (D.G.M. in short), even though the incumbents on the post of Works Manager in the same organisation are indeed eligible. These are the basic facts and grievances with which the Applicants come up to the Tribunal.

3. The grounds taken in the O.A. and argued, amongst other, by their Learned Counsel, Shri G. K. Masand, are briefly as follows :

3.1 In the O.A., a description is given as to the various presses and organisations in the country under the Respondents, specially Security Paper Mill at Hoshangabad and Bank Note Press at Dewas. Indeed, the main argument that was taken and made strenuously by the Learned Counsel for Applicants was that this is a case of discrimination. It is contended that the Chief Engineer at the Respondents' organisation at Hoshangabad and Dewas are eligible, as per the Recruitment Rules operating there, for the post of D.G.M. in Hoshangabad and Dewas (viz.) Security Paper Mill, Hoshangabad and Bank Note Press, Dewas. A stand is taken that present Applicants working in Nasik are, indeed, fully

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qualified and experienced and the discrimination that is being practised as per Recruitment Rules is unjustifiable and illegal. They contend that they are fully qualified in technical terms and, in fact, it is contended that Applicant No. 2 before retirement had indeed officiated as D.G.M. and even as General Manager. This is the main line of argument, as expounded by the Learned Counsel, Shri Masand, during his oral argument.

3-2 While on the subject of Applicant No. 1, we will deal with two points that were brought to our notice by the Learned Counsel for Respondents. The first was that, he has since retired. In fact, this was pointed out to us fairly by the Learned Counsel for Applicant also. Then our attention was also drawn by the Learned Counsel for Applicant to the copy of the judgement in O.A. No. 354/88 made by this Tribunal on 29.04.1993 (copy at page 124). It was argued that in view of the conclusions reached at para 5 of the aforesaid judgement, the case of Applicant No. 1 was hit by resjudicata. Admittedly, even if the Applicants succeed, Applicant No. 1 cannot get any retrospective benefit, since contest to Recruitment Rules is involved. Also, there is force in the contention about the argument of res judicata. Accordingly, the O.A. really survives only in so far as Applicant No. 2, Shri Dinesh Kumar, is concerned.

4. The Respondents have filed a detailed statement in Reply where the claim of the Applicants is resisted. The ground taken in the Written Statement, as argued at some length by their Learned Counsel, Shri V. G. Rege, are briefly as follows :



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It is stated that the Recruitment Rules are clearly framed by Government after due thought and after considering the qualification, duties, etc. of different posts as also recommendations made by expert Bodies like the Pay Commission, etc. The Learned Counsel argued that as per settled law, it was the right of the Department concerned to frame the Recruitment Rules and arrive at a conclusion as to what Recruitment Rules should be. He cited case law in this regard and prayed that as per settled principles of law, Tribunals like ours should not go into determining what Recruitment Rules should be and, indeed, what the zones of promotion should be. The case law in the matter of Commissioner, Corporation of Madras v/s. Madras Corporation Teachers' Mandram and Others L 1927 (1) SCC 253 I was cited in support as also the judgement of the Hon'ble Supreme Court in H.R. Ramachandraiah & Another v/s. State of Karnataka & Others reported at 1927 (3) SCC 639.

5. Learned Counsel for the Respondents also sought to draw our attention to para 10 of the Reply Statement of Respondents (page 109 of the Paper Book) to state that the Fifth Central Pay Commission has considered the matter at para 66.61 of its report, which is reproduced by them in the said para. It is opined as follows :

"66.61 : DEPUTY GENERAL MANAGER IN THE INDIA SECURITY PRESS, NASIK IS A TECHNICAL POST RELATED TO PRINTING TECHNOLOGY. IT WILL, THEREFORE, NOT BE DESIRABLE TO PLACE THE LOWER POSTS OF MANAGER (CONTROL) AND CHIEF ENGINEER IN THE FEEDER GRADES FOR PROMOTION TO THIS POST, EVEN THOUGH THEY ARE IN THE SAME PAY SCALE AS THAT OF THE WORKS MANAGER."

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6. We have considered the rival contentions placed before us and the papers on record. At the outset, we are conscious of the law settled by the Hon'ble Supreme Court in the cases cited above as also in others, that Tribunals like ours will not go into determining as to what Recruitment Rules should be and that any interference in this context should come only if there is any gross arbitrariness proved. We have carefully considered the fact that the Pay Commission has also had a look at this matter. Well, as the qualification of the Applicant in the case may be totally adequate and comparable to the Chief Engineer in the organisations at Hoshangabad and Dewas, we do note that this is not a case where we can, as a Tribunal, can arrive at a conclusion that there is a miscarriage of justice and hostile discrimination.

7. However, it is important to record here what is stated at page 115 i.e. para 16 of the Written Statement of Respondents. Respondents themselves while putting forth their contentions, record as follows :

"It is further submitted that the grievance of the Applicants will be considered and taken care of while amending existing recruitment rules in the light of the recommendations of the Fifth Pay Commission and, the same is under active consideration."

We also record here that Learned Counsel for Respondents, while pointing this out, had also brought to our notice that a representation which had been made by the Applicant, was indeed pending when the Applicant chose to come up to the Tribunal. It is still pending with Respondents. We thus note that the

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Respondents are not averse to reconsider the matter and are in fact in the very process of doing so. They might have even held their hand in view of the pendency of this O.A. Be that as it may, it will be just and in the fitness of things that Respondents consider the prayers made by the Applicant and the contentions taken in depth and take a decision in this matter. We do hope that the points strenuously urged about discrimination as between recruitment rules vis-a-vis Chief Engineer at the Hoshangabad and Dewas Units on the one hand and the two units at Nasik on the other will also be taken into consideration while taking a decision.

8. The Respondents are, therefore, directed to take a decision in the matter, which is already under their consideration, on merits, within a period of four months from the date of receipt of a copy of this order. Subject to above, we cannot grant the relief sought by the Applicants in this O.A., which is hereby disposed of. There will be no order as to costs.

S. Raju
(SHANKAR RAJU)
MEMBER (J).

B. N. Bahadur
(B. N. BAHADUR)
MEMBER (A).