

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

O.A.NO. 155 of 1990

Date of Order: 31st July, 1990.

Between:

1. R.Kuppuswamy
2. Y.Sri Rama Murthy

..Applicants

and

Union of India, rep. by Secretary
to Government of India, Ministry of
Steel and Mines Department of Mines,
Shastri Bhavan, New Delhi.

2. The Director General, Geological
Survey of India, Calcutta.
3. The Deputy Director General
Geological Survey of India,
Southern Regional Office, Hyderabad.
4. B.V.Ramanamurthy, Asst., Geological
Survey of India, Hyderabad.
5. P.K.Bhattacharya, Assistant,
Geological Survey of India, Hyderabad.
6. T.Satya Rao, Assistant,
Geological Survey of India,
Hyderabad.

..Respondents

APPEARANCE:

For Applicants: Shri V.Venkateshwar Rao, Advocate

For Respondents: Shri Naram Bhaskara Rao, Addl.CGSC
Shri M. Surendar Rao, Advocate for RR 4 to 6

C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI D.SURYA RAO: MEMBER (Judicial)

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(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SHRI B.N.JAYASIMHA:
VICE CHAIRMAN)

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1. The applicants herein are Superintendents in
the Geological Survey of India, Southern Regional Office,
Bandlaguda, Hyderabad. They have filed this applica-
tion questioning the Office Order No.188/A.32016/1/
89/15A, dated 21st February, 1990 issued by the 3rd
respondent cancelling the offer of appointment to the
post of Superintendent* issued to the applicants.
It is contended that they were initially appointed as
LDCs in the year 1961, that they were promoted as UDCs

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in the year 1964, that they were promoted as Assistants with effect from 20-12-1979 and 3-6-1980 respectively and that they were further promoted to the post of Superintendent by the 3rd respondent vide his office Order no.166-175/A-32016/1/89/15A, dated 19-2-1990. In pursuance of the orders of promotion, the 1st applicant took charge as Superintendent in the Personnel Management Branch (PMB) on 20-2-1990 FN and 2nd applicant took charge of the said post on 19-2-1990 AN in Accounts-I Section. While the applicants were discharging their duties as Superintendents, they were served ^{the} impugned Order dated 21-2-1990 by the 3rd respondent informing that the offer of appointment order issued to them to the post of Superintendent on 19-2-1990 is treated as cancelled as the proceedings of the Departmental Promotion Committee constituted earlier has been cancelled. As already stated, it is this order which is sought to be impugned as illegal, arbitrary and without jurisdiction. It is contended that as per the recruitment rules governing the promotions to the post of Superintendent issued vide Notification dated 25-7-1983, the posts have to be filled in the following manner:

"Promotion: 90% from the grade of Assistant with 4 years' regular service in the grade and 10% from the grade of Stenographer Gr.II with 4 years regular service in the grade."

It is contended that there were ³ posts vacant against which 8 persons from the Asst.Cadre were considered for 2 posts and 5 persons from Stenographer Gr.II cadre were considered for one post by the DPC comprising of 4 members.

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The DPC selected the applicants herein for the 2 posts of Superintendents earmarked to be filled in by considering the cases of the persons belonging to the Assistant cadre. The recommendations of the DPC were accepted by the 3rd respondent who thereafter issued the Office Order Dated 19-2-1990. It is contended that the selection of the applicants is in accordance with the Rules and legal, and they are fully eligible for the said promotion. Cancellation of the promotion is illegal and arbitrary and passed even without observing the principles of natural justice. It is contended, according to the instructions contained in the Office Memorandum No.22011/30/80-Estt (D) dated 26-3-1980 issued by the Department of Personnel and Administrative Reforms, 'once the recommendations of the DPC are accepted by the appointing authority, it shall be final and if any question is to be raised or disagreement with regard to the merit of assessment by the DPC is to be expressed, it should be done only before the recommendations of the DPC are accepted and acted upon'. For these reasons also, it is contended that the cancellation order is illegal. It is further contended that the applicants have not been reverted till the date of filing the application viz., 22-2-1990 and the applicants therefore sought interim stay of the impugned order. The main relief is to quash the impugned orders dated 21-2-1990.

2. On behalf of the respondents 1 to 3, a counter was filed by respondent no.3 stating that the applicants

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were given the offer of appointment under the Orders dated 19-2-1990 and they were cancelled as the proceedings of the DPC constituted earlier had been cancelled. It is contended that the DPC had followed guidelines stipulated in Para VI(2) of OM No.22011/6/75 Estd.

(D) dated 30-12-1976 of the Department of Personnel and Administrative Reforms according to which selection should be made on the basis of merit assessed by the DPC as 'Outstanding', 'Very Good' and 'Good' and the panel be drawn up to the extent necessary by placing the names of the outstanding officers first, followed by those officers categorised as 'verygood' and the officers belonging to very good followed by the Officers categorised as 'Good'. The inter-se-seniority of officers belonging to any one category would be the same as their seniority in their lower grade. It is stated that these guidelines were modified in para 2.3.1.(i) of OM No.F/22011/5/06 Estd.(D) dated 10-3-89 of Department of Personnel and Training which reads as follows:

"The list of candidates considered by the Departmental Promotion Committee and the overall grading assigned to each candidate would form the basis for preparation of the panel for promotion by the Departmental Promotion Committee. The following principles should be observed in the preparation of the Panel:

Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts, a bench^{mark} grade would be determined for each category of posts for which promotions

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are to be made by selection method. For all Group 'C' Group 'B' and Group 'A' posts upto and excluding the level of Rs.3700-5000 excepting promotions for induction to Group 'A' posts or services from lower groups, the bench mark should be 'Good'. All officers whose overall grading is equal to or better than the 'bench mark' should be included in the panel for promotion to the extent of the number of vacancies and they will be arranged in the order of their inter-seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench mark of 'Good'. 1. Is

It is contended that the DPC was not kept informed of the above said order dated 10-3-1989 and ~~when~~ subsequently when this was brought to the notice of the appointing authority, the proceedings of the DPC was cancelled. It is further contended that the offer of appointment made it clear that the appointment is purely temporary terminable at any time without assigning any reasons. Hence, the office order dated 21-2-1990 was issued assigning the reasons for cancellation of the offer of appointments dated 19-2-1990 and the cancellation order is proper.

3. M.A.No.145/90 has been filed by three other employees in the category of Assistant seeking to be impleaded as party respondents to this application. These three employees seeking to get themselves impleaded as party respondents contend that they are seniors to the applicants in the category of Assistants. They further contend that the DPC adopted ^awrong procedure

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due to non-appraisal of the latest procedure in vogue i.e. O.M. dated 10-3-1989. It is further contended that in making the selections in the instant case, there were irregularities in that number of vacancies for two or three years should not have been pooled together. It is contended that in the instant case one vacancy arose in the year 1989 and another vacancy arose during 1990. Therefore, the first 5 candidates in the seniority list would be entitled to be considered against the vacancy that arose in the year 1989 and ~~after~~ selecting the one candidate for the vacancy in the first year i.e. 1989 the four candidates who were left over and another candidate shall have to be considered for the vacancies that arose in the year 1990. In the instant case, instead of adopting the above-said procedure, the DPC had considered the claims of 8 candidates which is erroneous and contrary to the procedure that is given in the OM dated 10-3-1989. The implead petition also seeks to justify the cancellation orders for the reasons mentioned in the counter affidavit of respondent no.3. This implead petition has been ordered.

4. After filing of the counter, applicants have filed M.A.No.179/90 seeking to implead Union of India, represented by its Secretary, Department of Personnel and Training, as the 7th respondent in this application. The applicant also filed another MA being MA.No.179/90 for amendment 66 prayer viz., to declare that the guidelines No.6.2.1.(1) of the OM No.22011/5/86-Est(D) dt.10-4-89 is illegal, arbitrary and unconstitutional in so far as it relates to introduction of 'Bench Mark' grade and preparation of panel on the basis of inter-se seniority irrespective of the over-all grading of the candidates.

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5. We have heard Shri V.Venkateshwar Rao, learned counsel for the applicant and Shri Naram Bhaskar Rao, Addl. Standing Counsel for the Department *for Respondents 1 to 3 and Sri M. Suresh Rao Advocate for Respondent 4 to 6.*

6. Shri Venkateshwar Rao states that the respondents ought to have issued a notice to the applicants before cancelling the orders of their promotion and without such notice the issue of cancellation of the orders will be in violation of principles of natural justice. He states that the matter may be decided on this sole ground and that he is not pressing the objection he has taken in regard to the introduction of 'Bench Mark' for the purpose of promotion in the revised guidelines issued by the Department of Personnel. In support of his contention, he relies on the following cases:

- (i) R.Musalappa Reddy Versus State of Andhra Pradesh (1969 SLR 43);
- /(ii) S.N.Prasad Vs. State of Bihar (1971 SLR 447)
- /(iii) Subhashni Mahajan Vs. State of Punjab and others (1984 (1) SLR 341); and
- ✓/(iv) P.K.Jain and another vs. Union of India (1985 LAB IC 1641).

7. In R.Musalappa Reddy's case, the applicant had been promoted from the post of Asst.Professor Ophthalmology. He had questioned the order reverting him from the post of Clinical Professor Ophthalmology. The question that arose for consideration was whether the petitioner was entitled to a notice and ought to have been given an opportunity of being heard on the appeal filed by respondent no.2. The Court held that the applicant had that right as he had been appointed regularly to the post as is evident from the order dated 9th November 1965. Relying on Binapani Dei's case (AIR 1967 SC 1269) the Division Bench of the A.P. High Court held that every person or authority called upon to determine the rights of persons and to pass

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orders prejudicially affecting any person or having civil consequences (is entitled to a notice). It cannot be heard to be said that even after a hearing, the ~~existing~~ decision would be the same. Such an argument, apart from giving rise to an implication of prejudice, is alien to the basic concept of the rule of law and impartial consideration of the inter se claims of persons whose rights are said to be affected.

§ . In S.N.Prasad's case, the petitioner had been promoted and confirmed to the post of Draftsman Grade II. It was noticed that the petitioner had been appointed by the Selection Board after holding an interview of ~~all~~ all the nominees of different circles and on finding him suitable for the job. The only mistake complained ~~of~~ on behalf of the State of Bihar is that claim of Sri Jamuna Prasad was ignored while filling up the post of Draftsman Grade I. It was also noticed that Jamuna Prasad was not nominated as he was not found a suitable candidate. On the facts of this ~~case~~ the bench observed "Assuming that it was a case of ~~of~~ mistake, the question arises whether the petitioner could have been removed from the post of Draftsman Grade I without following the constitutional procedure" It was also held that the petitioner had ^a right to hold the post of Draftsman Grade I and by degradation in rank he would suffer a huge financial damage. The bench also noted that the appointment of the petitioner as Draftsman Grade I who had worked ~~for~~ more than six years in Gr.II cannot be said to be illegal.

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9. In Subhashni Mahajan's case the petitioner impugned the order ^{upheld} ~~vice~~ which the selection grade granted to her was cancelled on the ground that the same is violative of the principles of natural justice inasmuch as no notice or hearing was afforded to her before the cancellation of the order in her favour. The Court held that 'before an order to the prejudice of a civil servant can be passed, he/she has to be afforded a due opportunity of hearing to contest the same.'

10. In P.K.Jain's case, the petitions^{or} who ~~are~~ ^{were} holding the post of Permanent Inspector of Ways in the Western Railways challenged the final seniority list of the cadre of Inspectors wherein their names are shown at serial Nos. 185 and 186 thereby cancelling the earlier panel of Inspectors wherein they were shown at Serial Nos. 6 and 7 respectively. One of the grounds for challenge of the same was that the petitioners were not heard before their panels were cancelled by the concerned authority, which action is arbitrary and violates the principles of natural justice. The Court held that 'by cancellation of panel the petitioners who were in the panel have suffered legal injury. In any case the order is prejudicial to the petitioners and before such panel is cancelled, if they had been given an opportunity of being heard, they could have ~~been~~ pointed out that so far as they were concerned the panel was operated, or they could have also pointed out that their selection having been upheld and not cancelled, by virtue of R.306 read with R.324 of the Indian Railway Establishment Manual their seniority cannot be changed by unilateral cancellation of the rest of the panel. The

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respondent-railway has patently committed breach of principles of natural justice and, therefore, the impugned order, so far as the petitioners are concerned, is void, and the seniority list based upon such order, so far as the petitioners are concerned, requires to be quashed and set-aside."

11. Shri Bhaskar Rao, on the other hand, contends that where the authority had acted contrary to rules, the orders passed could be cancelled without notice. There is no violation of principles of natural justice in such cases. The cancellation is only made to ensure that the authority concerned follows the rules and issues the orders afresh in strict compliance of the rules. In support of his contention he relies on the following decisions:

- /(i) M.Kripakaran Vs. General Manager, Southern Railway (1988 (7) SLR 343);
- /(ii) Ranjit Singh Versus President of India / and others (1971(3)SLR 561); and
- /(iii) M.C.Bindal Vs. R.C.Singh (AIR 1989 SC 134) /

12. In Kripakaran's case, the applicant was promoted from the post of Senior Signaller (SS) to the post of Head Signaller (HS). He had questioned the order reverting him to the post of Signaller. The questions that arose for consideration were whether the department was right in correcting its own mistake and reverting the applicant and whether the applicant was entitled to a notice and ought to have been given an opportunity of being heard. The Bench, on consideration of the facts of the case held as follows:

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"17. When once we hold that there cannot be reservations, where the number of posts does not exceed four, then it follows from the same that the retrospective ad hoc promotions given to the applicant from 1-1-1984 and 1-8-84 to the posts of HS and CTTI were not legitimately due to him and the same were given to him by mistake and the DPO was right in correcting his own mistake and ~~xxx~~ reverting the applicant to the original post of SS."

The Bench further held as follows:

"19. On the facts and circumstances a show cause notice and an opportunity to make representations, the highest that could have been claimed by the applicant, would not have made any difference to the ultimate decision to be reached against the applicant. We cannot uphold this plea as if it is a ritual to be performed by the DPO."

13. In Ranjit Singh's case, the petitioner who was a member of the Indian Police Service was promoted as Superintendent of Police, Selection Grade. He was further promoted to officiate as Deputy Commandant General, Punjab Home Guards. The petitioner continued to hold the post and was actually appointed as an Addl. Deputy Inspector General of Police, PAP and afterwards he was sent for training in the Defence College. He had challenged the orders whereby the original orders for promotion passed earlier stood cancelled. The order was challenged as amounting to reduction in rank and passed without opportunity of being heard and further it was violative of natural justice, cast stigma, affected emoluments and future chances of promotion. The Court held that 'it was nowhere laid down that no matter whether there was infringement of an enforceable legal right or not, whenever there was reduction in rank or loss of seniority, emoluments or the like resulting even from

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the exercise of the lawful authority the effected Government servant always got under the rules of natural justice, a right to be afforded an opportunity to be heard before an order relating to any such matters was passed." It was further held that "it was difficult to hold that any rule of natural justice stood violated when the petitioner on reversion from the officiating posts of Deputy Inspector General and Selection Grade Superintendent of Police was not afforded an opportunity to be heard. However widely rules of natural justice might be extended in order to ensure a just decision by a quasi-judicial or administrative authority ^{the answer to the question} whether any and if so, which of them, applies to a particular case must depend on the scheme of the Act and a rule of any provision of ^{law} under which relations of the parties inter se are regulated". The Court further observed that "Where an order was passed by the Government which was palpably an erroneous administrative decision which affected several senior officers, ^{and} there ~~is~~ no rule of law which debar^s a Government, while acting administratively, from remedying the ^{wrong} ~~strong~~ done by itself. Every Administrative Authority has an inherent right to rectify its own mistakes unless there is some specific provision of law which prohibits such a course. An officer holding an officiating post has no vested right to be heard or to urge that since he had obtained some benefit under a wrong decision made by a departmental authority, that decision be not rectified as it would result in the loss of that benefit to him."

hvi 14 In M.C. Bindal's case, the appellant impugned the order of the Public Service Commission in cancelling his candidature and withdrawing the recommendations made in his favour as wholly illegal and bad. The Supreme

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Court held as follows:

"....It is the duty of the Commission with the help of experts in the particular subject to hold interview and to find out and select the candidates having the requisite qualifications and experience fit to be recommended to the ~~pass~~ Government for appointment to the said post of Food and Drug Controller. Therefore, under Art.320(3)(a) and (b), it is the duty of Public Service Commission to consider and to get itself satisfied as to which of the candidates has fulfilled the requisite qualifications specified in the advertisement. The Commission in this particular case has duly got verified the certificates of the Dr. Bindal in regard to his experience of five years in drug testing by a Deputy Secretary of the Commission and after considering ~~the~~ his report as well as the certificates came to the conclusion that the appellant though fulfilled educational qualifications, lacked in the requisite experience of five years in drug testing. The Commission, therefore, revised its earlier decision and withdrew the candidature of the appellant and also cancelled its recommendation earlier given in favour of the appellant. This decision of the Public Service Commission, in our considered opinion cannot be faulted. It is the constitutional requirement envisaged in Art.320 that the Commission will have to perform the duty of recommending the candidate fulfilling all the requisite qualifications for the post to the Government for being considered for appointment to the post concerned."

15. In the present case, the Selection Committee proceeded to make the selections on the basis of guidelines which were not in force. The Committee did not have before it the revised guidelines issued by

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the Department of Personnel and Administrative Reforms in OM dated 10th March 1989 in which the following procedure was laid down to be followed for certain posts:

"2.3.1. The list of candidates considered by the DPC and the overall grading assigned to each candidate would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel:

- (i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts a bench mark grade would be determined for each category of posts for which promotions are to be made by selection method. For all Group 'C', Group 'B' and Group 'A' posts upto (and excluding) the level of Rs.3700-5000, excepting promotions for induction to Group 'A' posts or Services from lower groups, the bench mark should be 'Good'. All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench mark of 'good'.

Wherever promotions are made for induction to Group 'A' posts or Services from lower groups, the bench mark would continue to be 'good'. However, officers graded as 'outstanding' would rank en bloc senior to those who are graded as 'Very Good' and officers graded as 'Very Good' would rank en bloc senior to those who are graded as 'Good' and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter seniority in the feeder post.

- (ii) In respect of all posts which are in the level of Rs.3700-5000 and above, the benchmark grade should be 'Very Good'. However, officers who are graded as 'Outstanding' would rank en bloc senior to those who are graded as 'Very Good' and placed in the select panel accordingly upto the number of vacancies officers with same grading maintaining their inter se seniority in the feeder post.

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- (iii) Appointments from the panel shall be made in the order of names appearing in the panel for promotion.
- (iv) Where sufficient number of officers with the required bench mark grade are not available within the zone of considerations officers with the required bench-mark will be placed on the panel and for the unfilled vacancies, the appointing authority should hold a fresh DPC by considering the required number of officers beyond the original zone of consideration."

The posts for which selections are to be made in the case falls in the category (i) above. The benchmark has to be 'good' and the panel has to be prepared as laid down there. Instead the Committee proceeded on the earlier guidelines. The applicants who are junior to respondents 4 to 6, because of the higher grading given to them under the old procedure superceded by the OM dated 10-3-1989, came to be placed above the respondents 4 to 6 in the panel. The entire proceedings of the Committee are vitiated for the reason that the Committee proceeded to prepare a panel not in accordance with the guidelines. On the facts of the case, we do not find that the decisions in Musalappa Reddy's, S.N.Prasad's, S.Mahajan's and Jain's cases would apply. In our view, the observations made in Ranjit Singh's case cited above apply having regard to the facts of the case. In this case it is palpably an erroneous selection made and there is no rule or law which debars the respondents from remedying the wrong. The erroneous selection has affected several senior employees and it cannot be said that the mistake cannot be corrected without issuing a notice to the applicants. The selection made by the Committee is ab initio not legal inasmuch as it did not follow the procedure it is required to do so.

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Issue of a notice is not a ritual to be performed in every case and it is certainly not warranted when the administration is seeking to correct an action taken which is ab initio contrary to law or rule.

16. In the circumstances, the application is dismissed. No costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
VICE Chairman

D. Surya Rao
(D. SURYA RAO)
Member (Judl)

Dt. 31.7., 1990.

SQH*

S. Venkateswara Rao
DEPUTY REGISTRAR (JUDL)

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To

1. The Secretary, ~~Govt.~~ Govt. of India, Union of India, Ministry of Steel and Mines Department of Mines, Shastri Bhavan, New Delhi.
2. The Director General, Geological Survey of India, Calcutta.
3. The Deputy Director General, Geological Survey of India, Southern Regional Office, Hyderabad
4. One copy to Mr. V. Venkateswara Rao, Advocate. 1-1-287/27, Chikkadapally, Hyderabad - 020.
5. One copy to Mr. N. Bhaskara Rao, Addl. CGSC. (for R1 to R3.) CAT. Hyderabad Bench.
6. One copy to Mr. M. Surender Rao, Advocate for R4. to R6. 17-119, Kamalanagar, Near Dilsukhnagar, Hyderabad.