

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.979/92

dated : 29-3-95

J. Somaiah

Applicant

vs.

1. Union of India, rep. by
Secretary, Department of Mines
Min. of Steels & Mines
New Delhi

2. The Controller Genl. of India
Indian Bureau of Mines
Govt of India
Indira Bhavan, Civil Lines
Nagpur

Respondents

Counsel for the applicant : Vilas Afjulpurkar
Advocate

Counsel for the respondents : N.V. Raghava Reddy
SC for (respondents) Central
Government

CORAM

HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. MR. A. B. GORTHI, MEMBER (ADMN.)

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman)

Heard Sri Vilas Afzalpurkar, learned counsel for the applicant and Sri N.V. Raghava Reddy, learned counsel for the respondents.

2. The applicant herein joined service as a Shift Boss (class-II) in Geological Survey of India, at Hyderabad, in 1972, on being selected by UPSC. In 1977 he was selected and appointed for the post of Assistant Controller of Mines, Group 'A'. He was promoted as Dy. Controller of Mines on adhoc basis on 14-1-1985 and he was reverted as Assistant Controller of Mines on 5-9-1986. That reversion was challenged in OA.1730/86 on the file of Bangalore Bench of CAT. It was dismissed on 7-9-1987 by holding that there is neither irregularity nor illegality in the reversion.

3. This OA was filed challenging the amendment of the Recruitment Rules in regard to Deputy Controller of Mines which had come into effect on 5-5-1979.

4. The Recruitment Rules formulated for Assistant Controller of Mines and Deputy Controller of Mines as per order dated ^{laid} 25-3-1964 ~~lay~~ the following educational qualification both for Assistant Controller of Mines and Dy. Controller of Mines : -

"Diploma in Mining of the Indian School of Mines and Applied Geology, Dhanbad, or Degree in Mining Engineering of a recognised Institute or equivalent."

5. The recruitment for the post of Deputy Controller of Mines as per those rules is by way of promotion failing which by Direct Recruitment. Five years of service in the Grade of Assistant Controller of Mines was prescribed as the ^{Dy. Controller} period for consideration for promotion to the post of Mines.

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Further those rules ~~said to be~~ in regard to both the posts, say that the qualifications were relaxable at the Commissions' discretion in case of candidates otherwise well qualified.

5. Para 7 of the amended Recruitment Rules which had come into effect on 5-5-1979 prescribe degree in Mining Engineering from a recognised university or institute or equivalent as minimum educational qualification for Direct Recruitment to the post of Deputy Controller of Mines. Para-8 of the same states that the ^{same} educational qualification is ~~necessary~~ ^{required} for promotees also. While Para 11₅ is to the effect that the transferee also has to have the same educational qualification.

6. The applicant is having only Diploma in Mining Engineering from Government Mining Institute, Gudur. Probably ~~that~~ ^{in view of his application} educational qualification might have been relaxed at the time of his selection to the post of Assistant Controller of Mines for the extant rules ~~too~~ permit such relaxation. But as the applicant is not having degree in Mining Engineering, ^{he} is not eligible for promotion to the post of Deputy Controller of Mines. As the said amendment had come into effect after the applicant was appointed as Assistant Controller of Mines, he might have felt that he could challenge the amended rules which had come into existence after his appointment, and hence he filed this OA.

7. At the outset it has to be stated that when he challenged the reversion after the amended rules have come into effect, he should have challenged those rules in OA.1730/86 on the file of Bangalore Bench. As he had not challenged it, the question of dismissal of this OA on the ground of res judicata might arise.

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a case of dismissed

8. But we feel it not ~~dismissing~~ on the ground of resjudicata ^{only,} as even on merits it is liable to be dismissed.

It is now well established that amended Service Rules will be equally applicable for those who ~~are~~ ^{were} in service by the date of amendment. Hence, it cannot be contended that the said amendment would not apply to the applicant. // There is nothing to indicate that it is arbitrary. The rule ^{of} prescribing minimum educational qualification is one ^{of} policy.

It will not be ~~interacted~~ ^{disputed} by Court/Tribunal unless the challenge is on the ground that it is violative of any provision of Constitution. It cannot be stated that there is an infraction of Article 14, for there is nothing to suggest that the laying down of rule by prescribing higher educational qualification is arbitrary. Hence, this CA has no merits and accordingly it is liable to be dismissed.

9. But while disposing OA.1730/86, the Bangalore Bench, observed that ~~the~~ desirability of providing promotional avenues for the ^{only} three Assistant Controllers of Mines who are ~~not~~ eligible for promotion as per amended rules may be considered. It is now stated for the respondents that one of those three retired on voluntary basis. Even in para 17 sub para(iii) of the reply statement, it is stated that a reference to the Ministry had been made on 23-9-92 requesting for sanction of two posts of Selection Grade Assistant Controllers of Mines in the pay scale of Rs.3000-4500 as one time exception. We hope and trust that the Ministry will take an early decision in the matter, and to consider as to whether the same can be provided as personal to the applicant herein and the other Assistant Controller of Mines who ^{were} appointed prior to 5-5-1979 and who ~~are~~ ^{as per amended rules} not eligible for promotion to the post of Deputy controller of Mines. The respondent No.2 has to

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submit a copy of this order by marking the relevant para para 17 sub para(iii) of the reply statement, alongwith a copy of the reference dated 23-9-92, to the concerned Ministry.

10. Accordingly the OA is dismissed. No costs.

Abhaya
(A. B. Gorthi)
Member (Admn.)

Neeladri
(V. Neeladri Rao)
Vice Chairman

Dated : March 29, 95
Dictated in Open Court

Abhaya 29/3/95
Deputy Registrar (J) CC

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To

1. The Secretary, Dept.of Mines
Ministry of Steels and Mines,
Union of India, New Delhi.
2. The Controller General of India,
Indian Bureau of Mines, Govt.of India,
Indira Bhavan, Civil Lines, Nagpur.
3. The Secretary, U.P.S.C. Dholpur House,
Shahjahan Road, New Delhi-1.
4. One copy to Mr.Vilas Afzalpurkar, Advocate, CAT.Hyd.
5. One copy to Mr.N.V.Raghava Reddy, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEE LADRI RAO
VICE- CHAIRMAN

AND

A. B. Gorathi
THE HON'BLE MR. R. RANGARAJAN, M(ADMN)

DATED - 29-3-1995.

ORDER/JUDGMENT:

M.A./R.A./C.A. No.

O.A. No.

T.A. No.

in
979/92
(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No order as to costs.

