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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. No. 316/92.

Dt. of Decision : 8.7.94.

Mr. S.P. Rao

.. Applicant.

Vs

1. The Union of India rep. by
The Secretary to
the Ministry of Defence,
New Delhi - 110 011.
2. Engineer-in-Chief's Branch
Army Headquarters
DHQ (PO) Kashmir House
New Delhi - 110 011.
3. Shri Mehtab Singh, Steno,
C/o E-in-C's Br.
DHQ (PO) Kashmir House,
New Delhi - 110 011.

.. Respondents.

Counsel for the Applicant : Mr. S. Prasada Rao
(Party-in-Person)

Counsel for the Respondents] : Mr. V. Bhimanrao, Addl. CGSC.
NO 1002

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN
THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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O.A.NO.316/92.

JUDGMENT

Dt: 8-7-1994.

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri S.Prasada Rao, applicant in person and Shri V.Bhimanna, learned standing counsel for the respondents.

2. This OA was filed praying for a declaration that the case of the applicant for promotion to the post of Superintendent (Clerical) has to be considered under SRO 309/71 and he is entitled for the renamed post of Office Superintendent Grade-I and for a direction that he has to be given seniority in the panel No.A/412205/1/EIR, dated 30.9.1983 and No.41206/EIR (Sub), dated 14.5.1990, above Serial No.10 ie., Shri Mehtab Singh, Steno/OS Gr.I, by declaring that the reservation of provision whereby 5% of the posts in OS Gr.I for PAs and the reservation of 10% of the posts in OS Gr.II for Stenographers as per SRO 235/77 are violative of Article 14 of the Constitution.

3. The applicant joined service as LDC in Military Engineering Service (MES) on 27.7.1963 and he was promoted as UDC on 1.12.1969. Later, he passed B.Com., and also LL.B-3 years course.

4. As per SRO 309/71, an UDC who completed 3 years of service was eligible for promotion to the post of

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Assistant Incharge, and an Assistant Incharge who completed three years of service was eligible for promotion to the post of Superintendent Clerical. 10% of the posts of Assistant Incharge were reserved for Stenographers and the period of regular service for eligibility for promotion for Stenographers to the post of Assistant Incharge was six years and on completion of one year of service as Assistant Incharge, they were eligible for promotion to the post of Superintendent (Clerical). It also states that persons serving as PA to Brigadier at the time of promulgation of SRO 309/71 with three years of service in the grade, who have already served as Assistant Incharge or UDC for atleast one year would also be eligible for promotion to Superintendent Clerical.

5. The revised pay scales as per the recommendations of the 3rd Pay Commission had come into effect from 1.1.73. The pay scales for Office Superintendents, UDCs and LDCs before and after 1.1.1973 are as under:-

Prior to 1.1.1973

Supdt. Clerical Rs. 350-475
UDC .. Rs. 130-300
LDC .. Rs. 110-180

From 1.1.1973

OS Gr. I .. Rs. 550-750
OS Gr. II .. Rs. 425-700
UDC .. Rs. 330-560
LDC .. Rs. 260-400

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6. It is manifest from the above that there were two grades in the category of Office Superintendent (OS) from 1.1.1973 and there was also change in the designation, for it was Superintendent Clerical before 1.1.1973 while it was OS Gr.I and Grade-II from 1.1.73. But there was no amendment of the recruitment rules till SRO 235/77 was issued.

7. There were 314 vacancies in the post of Superintendent in the MES for the period from 1970 to 1975. Selection for filling up the said vacancies was taken on the basis of SRO 309/71. Stenographers moved Allahabad High Court challenging the said selection on the ground that there was no unified seniority list of Stenographers and the selection was proceeded on the basis of unit-wise seniority of the Stenographers. The Writ Petition filed by the Stenographers therein was allowed and the selection was set-aside. In the meanwhile, SRO 235/77 was issued. There were 286 vacancies ~~in~~ in the post of Superintendent from 1975 to 1980. When a ~~xxxxxxx~~ single selection was made for the vacancies from 1970 to 1980, the same was set-aside by the Ministry on the ground that it was not proper to have single selection for all the vacancies from 1970 to 1980 as thereby there would be extended zone of consideration. Then the selections were made separately for the vacancies upto 1975 and the vacancies upto 1983. After the unified seniority list ~~was~~ of Stenographers was prepared, the above selections were made and the gradings given at the time

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of earlier selection were followed in regard to those who were selected in 1983 in view of the observations of the Allahabad High Court in the Writ Petition filed by the Stenographers. Those who were selected for the ~~vacancies which~~ ^{existed before 1975} were given promotion to the post of OS Gr.II with effect from 1975 and some of them were also given promotions to the post of OS Gr.I within three months from the date of issual of the proceedings appointing them as OS Gr.II.

8. The posts of Office Superintendent (Legal Cell) were created in all the Zonal Chief Engineering establishments in India by the letter dated 21.11.1989 and the applicant was posted as UDC in the legal cell. The applicant filed OA 810/90 praying for a direction to the respondents that he should be promoted to the post of OS Gr.I of Legal Cell and the same was dismissed by the order dated 23.11.1990 by observing that there was no provision whereby UDC can be promoted to the post of OS Gr.I and as the applicant had not challenged the recruitment rules.

9. The contentions for the applicant are as under:-

i) The applicant was eligible for promotion to the post of Superintendent Clerical by 1.12.1976 by then as he completed six years of x regular service as UDC. Hence, for the vacancies that were in existence by that date, the applicant should be considered for promotion as per SRO 309/71.

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ii) Reservation for Stenographers is violative of Article 14 of the Constitution as the report of the 3rd Pay Commission clearly indicates that the posts of Office Superintendent, UDC and LDC come under the category of Clerical, while Stenographers ^{come} under a different category. It is ~~also~~ urged ~~for~~ that subsequent ~~in~~ reservation for Stenographers and PAs as per SRO 235/77 is ~~also~~ not valid and violative of Art.14 of the Constitution on the ground referred to above. The selection without considering the extra qualifications of Degree and Law Degree is also illegal.

10. It was pleaded for the respondents that this OA is barred by limitation and also by resjudicata as OA 810/90 filed by the applicant was dismissed. It is further urged for the respondents that reserving some posts to the Stenographers, PAs in OS Gr.II and Grade.I categories is not violative of Article 14 of the Constitution as the posts of OS are not technical and they are being considered by way of lateral induction. The reservation for PAs in OS Gr.I and Stenographers in OS Gr.II at 5% and 10% respectively cannot be held as excessive, for there ~~was only 5%~~ ~~in OS Gr.I and OS Gr.II~~ ~~there were 30 PAs and 492 OS Gr.II posts while there were 483 posts of Stenographers Gr.II and 3173 posts of UDCs.~~ there were 30 PAs and 492 OS Gr.II posts while there were 483 posts of Stenographers Gr.II and 3173 posts of UDCs.

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11. It was also contended for the applicant that giving promotion in the post of OS Gr.II with effect from 1975 when the selection was as per SRO 235/77 is illegal, for there cannot be any promotion from a date earlier to the date of recruitment rules on the basis of which selection was made. It is also submitted that the contentions with regard to the number of posts as per Affidavit dated 27.5.1994 are not supported by any material and they are not correct. It is also stated ^{by} ~~for~~ the applicant that as R per SRO 235/77, the posts of OS Gr.I are 397 while the number of posts of OS Gr.I referred to in the affidavit dated 27.5.1994 are only 145, and 1516 ~~and~~ posts of OS Gr.II are referred to in the SRO 235/77 while only 492 OS Gr.II are referred to in the affidavit dated 27.5.1994.

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12. It is true that the duties of Stenographers are different from those of UDCs, and similarly the duties of PSs are different from the duties of OS Gr.II. But the posts of OS Gr.I & II are not technical. Various Recruitment Rules ^{contain} ~~show~~ provisions whereby there is lateral induction by way of promotion eventhough those categories are having normal avenues of promotion. The question as to who is suitable for promotion to a particular post is one of policy, ^{and} the policy matters ^{if} can be challenged ~~only on the ground that~~ they are violative of any provision of the Constitution.

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Article 14 is interpreted to the effect that any arbitrary act is violative of Article 14. If equal opportunities are not given for employment, the same can be challenged under Article 16 of the Constitution. Merely because the duties of the Stenographers are different from the duties of UDCs it cannot be stated that it is a question of treating unequals as equals for promotion when it is felt by the Rule Making authority that in view of the duties to be discharged in the promotion post, more than one category of the employees can be considered. It is not stated for the applicant that such of those Superintendents who got promotion from the cadre of Stenographers or PAs are not in a position to discharge the duties of OS Gr.II/OS.Gr.I effectively. Hence, merely because promotion is open to more than one category, it cannot be stated that it is a case of treating the unequals as equals for consideration for promotion if the Rule Making authority feels that employees of all those categories can effectively discharge the duties of the promotional posts. It is true that as per SRO.309/71 Stenographers/PAs have to pass the UDC test and ~~also~~ they ^{also} have to work atleast ^{for} one year as UDCs before being considered for promotion to the post of Superintendent (clerical) while such a condition was not preferred to as per SRO.235/77. It is also one of ~~the~~ policy matters and ^{after consideration of all relevant factors in the course,} ~~on experience,~~ it is open to the Rule Making authority to amend the relevant rules. When it is not shown that those who are promoted from the posts of Stenographers/PAs are not effectively and efficiently discharging the duties of

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OS Gr.II / OS Gr.I, the deletion of the condition that they have to pass UDC Examination and they have to work for atleast one year as UDC/Assistant in charge for being eligible for promotion, ^{cannot be held as arbitrary} Hence, SRO.235/77 cannot be held as unConstitutional.

13. Eventhough it was not pleaded that the reservation to PS/Stenographer is excessive, respondents were required to furnish particulars in regard to the number of posts of PAs/OS Gr.I/Stenographers/UDCs/OS Gr.II just to find out whether the said reservations are excessive or not. When the said particulars were given for respondents by way of affidavit, the applicant had not chosen to file any rejoinder to state that those particulars are not correct. The number of posts sanctioned will be referred to in the Recruitment Rules but it does not follow that all those posts should be filled up even when there ~~is no sufficient~~ ^{does not warrant it} work load. Anyhow, when it is not even pleaded that the reservations for PSs/Stenographers in OS Gr.I and Gr.II respectively are excessive, there is no need further to advert to the same for the disposal of this OA.

14. Sri Mehtab Singh, who is at Sl.No.10 as referred to in the Relief portion of the OA, was Stenographer and he was considered when his turn in the category of Stenos had arisen for consideration for promotion to the post of OS Gr.II and after he was selected as OS Gr.II, he was again considered for the post of OS Gr.I when his turn had come and he was also selected to the post of OS Gr.I.

15. But it is stated that even by the time reply was filed in this OA there were ¹²⁰ ~~128~~ UDCs ^{above} ~~below~~ the applicant and thus the turn of the applicant had not come for consideration for promotion. It may be unfortunate that even

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^{applicant}
though ~~he~~ worked for more than 24 years in the category of UDC, his turn for promotion had not yet come. But when his turn for promotion in category of UDC had not arisen for consideration for even as OS Gr.II, the question of consideration for Grade II or Grade I does not arise.

16. It is vehemently urged that the SRD.235/77 is violative of Article 13 of the Constitution. Article 13(2) reads as under :

"13. Laws inconsistent with or in derogation of the Fundamental rights :

(1) All void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) in.... areas.

(4) Nothing....Article 368.

^{Thus it}
~~which thus~~ merely states that any Law which takes away or abridges the rights conferred by part ^{III} of the Constitution and Law made in contravention of the said clause is void to the extent of contravention. The various rights are referred to from Article 14. Thus, it is not a case where Article 13(2) conferred any Fundamental Right. Article 13(2) merely says that any Law which takes away or abridges the rights conferred under any of the provisions of Article 14 to 32 ^{ie. void} and any Law made in contravention of Article 13(2) to the extent of contravention is void. Thus, it is not a case where any Fundamental Right is conferred on Article 13(2). In order to invoke Article 13(2), it is necessary ~~for one~~ ^{one or the other} to establish that ~~any~~ of

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To

1. The Secretary to the Ministry of Defence,
Union of India, New Delhi.
2. The Engineer-Chief's Branch
Army Headquarters DHQ (PO)
Kashmir House, New Delhi-11.
3. One copy to Mr.S.Prasada Rao, Rarty-in-person,
A-11-110/2, Shyamlal Buildings, Begumpet, Hyd.
4. One copy to Mr.V.Bhimanna, Addl.OGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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A.D. 21/7/67.


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the rights conferred as per Articles 14 to 32 of the Constitution was taken away or abridged by the ^{impugned} provision. It is ~~challenged thus~~ ^{thus} in the absence of violation any of the rights referred to in Article 14 to 32, Article 13(2) is not ^{applicable} ~~applicable~~. It had become necessary to refer to the scope of Article 13(2) to the above extent, as it is vehemently urged that SRO.235/77 is violative of Article ¹³⁽²⁾ ~~32~~. Anyhow, as we felt that it is not violative of Article 14 or 16 of the Constitution, the question of holding it as void under Article 13(2) does not arise.

17. In the above view there is no need to consider the contentions ~~in regard to~~ limitations and res judicata raised for the applicant. ~~the respondents~~ ^{respondents}.

18. During the course of arguments, ~~learned counsel for~~ the applicant ~~stated~~ ^{stated} that it is not open to the respondents to give promotions with effect from 1975, when the promotions were made in accordance with SRO.235/77 which had ^{come} ~~given~~ later. But the applicant has no locus-standi to challenge the promotion whereby the promotions were given effect from 1975 ~~eventhough~~ ^{even though} selections were made in accordance with SRO.235/77 which had come later. Hence, we are not considering the said contention for disposal of this OA.

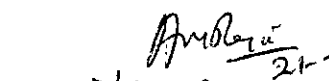
19. In the result, the OA is dismissed. No costs.


(R. Rangarajan)
Member (Admn)


(V. Neeladri Rao)
Vice Chairman

Dated : July 8, 94
Dictated in Open Court

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Deputy Registrar (J) CC

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. E. G. RTHI : MEMBER(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER(CUDL)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER(A)

Dated: 8-7-1994.

ORDER/JUDGMENT:

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

in

O.A.No.

316/92

T.A.No.

(W.P.)

Admitted and Interim Directions
Issued.

Allowed

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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