

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD.

O.A.No.1377/93 with
M.A.No.118/96 with
M.A.No.285/96.

Date of Judgement : 12-4-1996.

Between

L.Nageswara Rao .. Applicant

And

1. The Secretary,
Min. of Home Affairs,
New Delhi.
2. The Registrar General, India,
Min. of Home Affairs,
New Delhi.
3. The Dy. Director of
Census Operation,
Pioneer House,
Somajiguda,
Hyderabad-500482.
4. Sri B.V.Ramana Murthy
5. Ch.N.V.Bhadram
6. N.Mohan Rao
7. T.Koteswara Rao
8. Y.Jagan Mohan Reddy .. Respondents

Counsel for the Applicant .. Shri L.Nageswara Rao,
Party-in-person.

Counsel for the Respondents .. Shri N.R.Devaraj,
Sr. CGSC.

C O R A M

Hon'ble Shri Justice M.G.Chaudhari : Vice-Chairman

Hon'ble Shri H.Rajendra Prasad : Member(A)

Judgement

(Oral Order as per Hon'ble Shri Justice M.G.Chaudhari,
Vice-Chairman).

Leave to rely on the additional affidavit is granted.
M.A.No.118/96 stands granted.
2. Leave to rely on additional material papers for the
purpose of hearing of the O.A. is granted. M.A.No.285/96
stands granted.

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3. The applicant is aggrieved by his non-selection to the post of Junior Supervisor by the Departmental Promotion Committee (D.P.C. for short) while Respondents No.4 to 8 have been selected and promoted, who, according to the applicant, are junior to him. The applicant ~~feels~~ ^{prays} that the selection made by the D.P.C. on 15.10.93 as above may be set aside and the Respondent No.3 may be directed to promote him as Junior Supervisor giving him the rank above the Respondent No.4 and to allow him all consequential benefits.

4. The applicant who was appointed as a direct recruit to the post of Operator in the Census Department in the pay scale of Rs.330-560 (pre-revised) w.e.f. 5.6.82 came within the zone of consideration for promotion to the post of Junior Supervisor. The D.P.C. meeting was convened on 13.10.93. Among other candidates who included the Respondents No.4 to 8, the applicant was also included for consideration by the said Committee and was considered. The applicant, however, earned a lower bench mark than the Respondents No.4 to 8. Although the said Respondents were selected for appointment, he was not. With this grievance the only question to be considered would be as to whether the decision of the ~~Promotion~~ Committee could be interfered with. It is settled law that the Tribunal cannot go behind the decision of the Promotion Committee unless the proceedings of the D.P.C. are found to be vitiated on any ground or otherwise found to be illegal. The only challenge made by the applicant is that since he had earlier been terminated from service and had got the relief of reinstatement from the High Court the members of the committee might not have dealt with his ranking ^{fairly}. He has stated that because of the ^{reflected} ~~reluctant~~ action of the respondents in selecting his juniors

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by virtue of his filing the writ petition in the High Court and his subsequent grievance from time to time the Committee had not selected him. He has further averred that he apprehends that all the facts mentioned by him relating to his past service career may have influenced the D.P.C. in disregarding his claim for promotion as Junior Supervisor. His averments do not amount to challenging the decision of the Committee as illegal or prompted by malafides. Such, ordinarily, are the feelings of the persons who fail to make the adequate grade at the selection when they have to rank with others in competition. That apart, there is no categorical allegation of malafides. The members of the committee are also not impleaded as respondents. The writ petition had been decided by the High Court way back on 29.10.85. Pursuant to that decision the applicant was given reinstatement and all benefits including seniority. That is too remote a circumstance to correlate it with the alleged unfairness on the part of the D.P.C. The competency of the D.P.C. is not under challenge. The "Office of the Registrar General, India and the Offices of the Director, Census Operations in States/Union Territories, Junior Supervisors Recruitment Rules, 1984" provide that the promotion to the post of Junior Supervisors is by selection from the cadre of Operators by the D.P.C.

5. The respondents have made available for our perusal the minutes of the meeting of the D.P.C. held on 15.10.93. It is clearly seen therefrom that among the Operators who were considered, the applicant was at Serial 3. It is recorded in the minutes that the D.P.C. considered the cases of the three Operators Gr.B against the available 8 vacancies and after perusal of the C.R. dossier of the official (applicant) for the required period it awarded the overall grading as "Average". Since the Respondents No.4 to 8 earne

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the grading as "Good" they were preferred to the applicant who was graded as "Average". Since the Committee had acted in accordance with the prescribed rules and procedure, it is not possible for us to travel beyond the grading assigned by the Committee. In the written statement the respondents have stated that the D.P.C. after observing the selection process as per the instructions issued by the Govt. of India has recommended the names of Respondents No.4 to 8 alongwith the applicant on the basis of merit. It has also been stated that the D.P.C. perused the last 5 years ACRs of the concerned officers. They have described the apprehension of the applicant based on the facts alleged by him in the O.A. that these may have influenced the D.P.C. as baseless and incorrect. They have also stated that the recommendations made by the duly constituted D.P.C. which were in conformity with the Recruitment Rules notified for the post of Junior Supervisor have been accepted by the competent authority and regular promotions were ordered accordingly. It has also been stated by the respondents that the post of Junior Supervisor is a selection post for which seniority is not the only criteria and that promotion is not automatic.

6. The applicant who appeared before us wanted to urge another point which has not been included in the O.A. As desired by him, we have gone through the additional papers produced by him and we have also gone through the additional affidavit. The contention he has sought to raise in the affidavit is that in the light of the order in the earlier O.A. he is entitled to be given promotion to the post of Junior Supervisor with retrospective effect from 15.10.93 in-as-much as it must be held that the post of Junior Supervisor is a promotional post to be filled by seniority and he happened to be senior to Respondents No.4 to 8. This leads us to refer to the relevant material available

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available in that connection. The earlier O.A. i.e., O.A. No.482/94 was filed by the applicant seeking a declaration that the inaction of the respondents in not extending the grading promotions like Data Entry Operators Grade C, D & E on par with similarly situated persons getting grading promotions in National Informatic Centre (N.I.C. for short), Govt. of India and in the Railways, to the applicant, was illegal. ~~Byxmdinapaxkngxmf~~ The O.A. was disposed of by order dated 21.9.95 wherein the contention of the applicant who argued the case at that time also in person was noted as follows:-

"The promotions to the post of Junior Supervisor from Data Entry Operator Grade-B and the further promotion to the post of Senior Supervisor from Junior Supervisor is by way of selection, which promotions from Grade-B to Grade-E in the category of Data Entry Operator in Excise, Incometax, Railways and N.I.C. is on the basis of seniority-cum-suitability and thus there is discrimination even in the method adopted for promotion."

It may be mentioned that almost that is the very contention which is now being urged by the applicant. The decision rendered did not strike down the existing provision of the Recruitment Rules on the ground of discrimination although that was a point raised by the applicant. The final order^{as} was passed reads as follows:-

"In view of the material on record this O.A. has to be disposed as under:

"Respondent No.3 has to require the National Informatic Centre (NIC) to evolve the job assignment charts for different levels of data entry operators as envisaged in para 8 of Finance Ministry, Dept. of Expenditure, Implementation Cell OM No.F.7(1)/IC/86(44) dt.11.9.89.

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On the basis of the above assignment charts Respondent No.4 has to review as contemplated in paras 2 and 4 of the OM dt. 11.9.89 hereinbefore referred to and determine as to whether the posts in Grades C & D in the category of Data Entry Operator have to be created or not. R-4 has to further consider on the basis of such review as to whether the recruitment rule in regard to Junior Supervisor, the pay scale of which is same as that of the pay scale of Data Entry Operator Grade requires alteration in case a decision is taken to the effect that there is no need to create Grade-C in the post of Data Entry Operator."

7. A careful analysis of the order falls in the following components.

- (1) The Ministry of Personnel was ^{to} require the N.I.C. to evolve the job assignment charts for different levels of data entry operators.
- (2) The Registrar General, India was to review and determine as to whether the posts in Grade C & D in the category of data entry operators have to be created or not.
- (3) The Registrar General, India was to further consider on the basis of such review as to whether the recruitment rule in regard to Junior Supervisor, the pay scale of which is the same as that of the pay scale of data entry operator grade requires alteration in case a decision is taken to the effect that there is no need to create Grade-C in the post of data entry operator.

8. The above directions have to be understood in the context of the contention that was ^{waged namely that} alleged that any other departmental promotion from Grade-B to Grade-E was on the basis of seniority-cum-suitability. A clear implication of the order is that if, upon a review, the N.I.C. was of the

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opinion that posts in Grade C & D were to be created, then the Registrar General, India was to consider whether the recruitment rule which prescribes selection method should be altered (or otherwise there might arise ^{a conflicting situation} in-as-much as the posts in Grade C & D, if created, might possibly be required to be filled by seniority-cum-suitability whereas the recruitment rule continued to prescribe the process of selection). In other words, whether the order is to mean that if the N.I.C. and the Registrar General, India were not of the view that posts in Grade C & D should be created, there was no occasion to consider alteration in the recruitment rule.

9. A memo was issued by the Ministry of Home Affairs on 3.1.96 under which the Directorate of Census Operations falls, in which after referring to the order in the O.A., as mentioned above, it was stated that the N.I.C. has evolved the job assignments for the different grades of data entry operators and after undertaking a review of the posts in the EDP Division of the Registrar General's Office and in the Census Directorates, it has been decided that there is no need to create posts of data entry operators Grade C, D & E as the posts of Junior Supervisors and Senior Supervisors are more relevant to the nature of EDP work in the office and are adequate to take care of the promotional prospects of data entry operators Grade A & B. With this decision of the N.I.C. there arose no occasion to consider alteration in the recruitment rule so as to change the mode of selection to that of seniority-cum-suitability for promotion. In that connection, O.M. dated 10.11.95 issued by the Registrar General, India produced by the respondents sets out detailed reasons as to why it was not considered necessary to create

Grade D & E posts. The reasons that are given may be summarised as below:-

- (1) The job assignments is done by the N.I.C. in respect of all the grades A to E of data entry operators.
- (2) The Dept. of Personnel & Training have formed model rules and the N.I.C. have evolved the job assignment charts in pursuance of the instructions in that behalf.
- (3) The job assignment charts evolved by the N.I.C. stipulate data entry work for all grades and also work for Grade D & E.
- (4) The Junior Supervisors do not perform data entry operation work, that the work is done by the data entry operators Grade A & B. The scales of both these posts are lower than the next higher level of Junior Supervisors who are in the scale of Rs.1400-2300.
- (5) Under the existing pay structure of the higher posts including Junior Supervisor would be more or less on the same lines of the pay structure indicated in the Ministry of Finance orders dated 11.11.89 and, in fact, in the case of Senior Supervisors the pay scale is on the higher side as compared with data entry operators.

= 10. As incumbents to the posts of Junior Supervisors and Senior Supervisors do not function on par with the posts covered by the Ministry of Finance Office Memorandum dated 11.11.89, these posts would not be covered by the Office Memorandum dated 11.11.89 for rationalisation of the revision of the pay scales.

11. In regard to the above aspects it has been decided by the Government that the existing pay scales and designations of the posts of Junior Supervisors and Senior Supervisors in the Office of the Registrar General, India do not require any revision.

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12. It cannot, therefore, be held that the decision of the N.I.C. taken pursuant to the earlier direction of the Tribunal is contrary to that order. It is, therefore, not possible to accede to the argument of the applicant that since in other departments the promotion is based on seniority-cum-suitability that also is to be introduced in this department. The challenge to the recruitment rule on the ground of discrimination had not succeeded. Such a challenge has also not been made now in the O.A. The Recruitment Rules have been made by the President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Since the applicant was not selected on merits simply because he desires that the rules should be changed that cannot entitle him to get the relief claimed by him. Moreover, in the earlier O.A. the respondents were merely directed to consider whether the recruitment rules require any change. Since the rules have not been changed, it is not possible to compel the respondents to do so. Even if the rules ~~were~~ to be changed in toto, those would not automatically apply to the applicant as the selection has been over. The submission of the applicant that the respondents should change the recruitment rules with retrospective effect and thereafter he be promoted on the basis of seniority-cum-suitability is too far fetched to be accepted. The argument of the applicant that unless an opening is made he will not be able to earn the promotion as Junior Supervisor cannot be a legal submission.

13. It may be mentioned that after the matter was heard for more than two hours the applicant requested that he may be permitted to engage a lawyer. Ordinarily such a request would be granted but looking to the circumstances that

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the earlier O.A. was also argued by the applicant himself and although the instant O.A. had been filed through a lawyer the applicant gave a discharge to the lawyer by his letter dated 10.1.96 stating that thereafter he may be appearing as party-in-person and when the matter was called for hearing we mentioned that he wanted to engage a lawyer. Rather since the applicant was appearing in person we bestowed much more detailed and exhaustive consideration to the matter allowing him to make whatever submissions he intended to make which concession may not have been necessary to be given to a lawyer and when it appeared to the applicant that he was not likely to succeed he made the request for adjournment for engaging a lawyer at the fag end of the day. We are not satisfied that the applicant has suffered for want of assistance of a lawyer as he argued ably. In these circumstances we refuse adjournment.

14. In the result, the O.A. is dismissed. No order as to costs.

1.5.4.1
(H. Rajendra Prasad)
Member (A).

M. G. Chaudhary
(M.G. Chaudhary)
Vice-Chairman.

Dated: 12-4-1996.
Open Court dictation.

br.

Prashant
Deputy Registrar (S).
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