

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

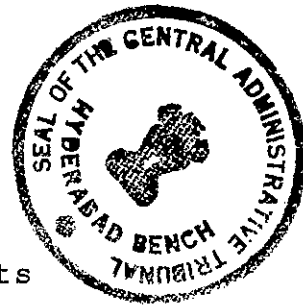
ORIGINAL APPLICATION NO. 300 of 1993

DATE OF ORDER: 15th FEBRUARY, 1997

BETWEEN:

N.S.RANGANATH

AND



.. APPLICANT

Union of India represented by its

1. Secretary to Government of India,
Ministry of Finance, Dept. of Economic Affairs,
North Block, New Delhi,
2. The General Manager,
Govt. of India Security Printing Press,
Saifabad, Hyderabad.
3. Shri H.J.K. Murthy, Accountant,
Security Printing Press,
Govt. of India,
Hyderabad.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. KSR ANJANEYULU

COUNSEL FOR THE RESPONDENTS: Mr. NV RAGHAVAREDDY, Addl. CGSC
for R-1 and R-2

Mr. N. RAM MOHAN RAO for R-3

CORAM:

HON'BLE SHRI JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN.)

JUDGEMENT

ORDER (PER HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN.))

Heard Shri KSR Anjaneyulu for the applicant and Shri N.V. Raghava Reddy for Respondents 1 and 2 and Shri N. Ram Mohan Rao for Respondent No. 3. No reply has been filed by R-3. The applicant was present during the entire period of hearing.

(SC) were also regularised. The case of the applicant was regularised without convening a DPC as he was already regularised with effect from 9.8.83. Thereafter the DPC recommended the name of the applicant for the post of Administrative Officer and Shri K.Devendrudu for the post of Accounts Officer on selection basis. The DPC also considered the candidature of R-3 for the posts while making the selection. The applicant and Shri Devendrudu were promoted to the post of Administrative Officer and Accounts Officer respectively vide Diary Orders 18 and 19 dated 15.6.89 with effect from 15.6.89 on regular basis.

9. R-3 ✓ challenged the promotion of the applicant by filing OA 505/89 on the file of this Bench on 6.7.89 which was disposed of by directing him to exhaust the departmental channels of appeal before approaching this judicial forum. In view of that direction, R-3 appealed to Joint Secretary (C&C) Ministry of Finance on 15.7.89 challenging the applicant's regularisation as an Accountant from 9.8.83, claiming seniority over the applicant and requesting his appointment to the post of Administrative Officer/Accounts Officer. That appeal was rejected on the ground that the case of R-3 was also considered along with other eligible candidates by the DPC and Shri Devendrudu (SC) was posted against a reserve post and the applicant was posted as a general candidate.

10. Thereafter R-3 filed OA 9/90 on 28.12.89 on the file of this Bench challenging the promotion of the applicant as Administrative Officer vide Diary Order No.18


[Handwritten signature]

and informed the Ministry of Finance also. No DPC was held for the above action. On 9.12.83, the applicant was promoted on adhoc basis as Accounts Officer for a period of 6 months with the approval of the Ministry of Finance which was continued to be obtained upto 8.6.85. In August 1987, the Ministry of Finance objected to the continuation of the applicant as Accounts Officer on adhoc basis without prior approval and asked for his repatriation to his parent department, Mint-Hyderabad. Subsequently, after protracted correspondence, the applicant was reverted in September 1988 on the instructions of the Ministry and was posted as an Accountant with effect from 27.9.88 and was re-promoted as Administrative Officer with effect from 28.9.88.

6. R-3 who was promoted as Administrative Officer with effect from 19.3.88 on adhoc basis was also reverted to the post of Accountant with effect from 27.9.88 and was re-promoted as Accounts Officer with effect from 28.9.88.

7. The adhoc promotions of both the applicant and R-3 were directed to be discontinued by the Ministry of Finance and hence both were reverted as Accountants with effect from 28.10.88. The applicant thereafter went on leave and continued on leave upto 14.6.89.

8. 41 classified regular Ministerial staff were regularised in SPP on 16.3.89 under the direction of the Ministry of Finance. The applicant and one Shri Devendrudu



12. In view of the above direction, the applicant herein was reverted to the post of Accountant with effect from 1.8.90 in terms of Diary Order No.10 of 1.8.90. The applicant herein filed an SLP in August 1990 against the judgement in OA 9/90 which it is stated had been withdrawn by the applicant himself.

13. The judgment in OA 9/90 was examined by the Ministry and the following observations were made in their letter dated 7.11.90:-

(i) Both the applicant and R-3 should be regularised only from the date of notification of the recruitment rules i.e, 30.6.87. Their inter-se seniority will depend on the order in which they are selected and appointed on transfer. This order of merit could be determined by the selection committee taking into account qualifications, nature and level of experience and the performance as assessed by the CRs of the previous years.

(ii) No DPC is involved for making recommendations on appointment by transfer.

(iii) As regards further promotion to the post of Accounts/Administrative Officers, the relevant recruitment rules should be taken into account with the date of regularisation as Accountant with effect only from 30.6.87 or later. It is further observed that the regular service mentioned in column-12 of the recruitment rule should be

dated 15.6.89 and also against the rejection of his appeal by Joint Secretary (C&C).

11. OA 9/90 was allowed on 11.6.90 and it was held inter-alia that the regularisation of the applicant herein as Accountant in SPP with effect from 9.8.83 had no basis at all and that he (applicant herein) could not be regularised as an exception in the absence of the recruitment rules. The promotion of the applicant herein as Administrative Officer issued vide Diary Order No.18 dated 15.6.89 was also set-aside as also the decision by the Joint Secretary (C&C) in rejecting the appeal of R-3 herein. It was further directed in that OA that the Government should consider the regularisation of the applicant and R-3 in this OA in accordance with the notified Recruitment rules applying the same criterion within a period of two months from the date of judgement in that OA and thereafter in accordance with the seniority in the grade of Accountant following the order of regularisation issued, the cases of the applicant and R-3 in this OA were to be considered for promotion to the post of Administrative Officer/Accounts Officer as per rules. Later, the applicant herein filed a review petition, RP 52/90 in OA 9/90, on the file of this Bench in July 1990. It was directed in the R.A. that the services of R-3 herein need not be regularised again if it was felt that the regularisation were to be effected from the date of notification of the recruitment rules as he was already regularised from that date. It was further directed that the issue of promotion to the post of Administrative Officer/Accounts Officer should be decided as of 15.6.89.

1

16. Aggrieved by the above reply, this OA is filed for setting aside the impugned letter No.SPP/A-44/92-93/6143 dated 10.3.95 (Annexure-8) by holding it as arbitrary and illegal and unlawful as the selection was not done by the properly constituted DPC in accordance with mandatory provisions and for a consequential direction to R-2 to consider the case of the applicant and promote him as Administrative Officer on regular basis as he is senior to R-3 with all attendant benefits.


17. It is not necessary in this OA to examine this case from the date of deputation of the applicant and R-3 to SPP as the position has crystalised in view of the direction given by this Tribunal in OA 9/90 dated 11.6.90. The directions given in OA 9/90 had already been indicated in para 11 supra. However, for the purpose of clarity and continuity, the direction verbatim is reproduced below:-

"In the circumstances, the impugned orders are set-aside and we direct the respondent No.1 to consider the matter of regularisation of the services of the applicant and respondent No.3 in accordance with the recruitment rules applying the same criterion, viz., from the date the recruitment rules are issued. However, if it is proposed to regularise the services from an earlier date, respondent No.1 should give the benefit of regularisation of the services from an earlier date to all the

taken to mean the service rendered in the same organisation in that capacity. From this view point, for promotion to the post of Accounts Officer/Administrative Officer as in 1989, Accountants can be considered only after suitable relaxation of the eligibility condition.

14. On the basis of the above observation, a selection committee was convened on 22.12.92 forenoon to consider the fixation of inter-se seniority between the applicant and R3 as Accountants and that committee had decided that the applicant is senior to R-3 as an Accountant in SPP Hyderabad. Both the applicant and R-3 were regularised with effect from 30.6.87 as Accountants placing the applicant senior to R-3.

15. Thereafter, the DPC for Group-B met on 24.2.93 comprising of the G.M, SPP, as Chairman, Director (F-I and C&C), Ministry of Finance as Member and Chief Medical Officer, I.G.Mint, Hyderabad as a co-opted member from the reserved community. The Deputy Secretary incharge of Administrative Division, Department of Economic Affairs, Ministry of Finance, though nominated was absent. The committee recommended R-3 for promotion to the post of Administrative Officer. The applicant filed a representation dated 1.3.93 (Annexure-7) challenging the promotion of R-3. That representation was disposed of by the impugned order No.SPP/A-44/92-93/6143 dated 10.3.93 (Annexure-8) on the ground that his name was not recommended by the DPC held on 24.2.93.



grades of Accounts/H.C/Cashier."

19. The main contentions of the applicant in this OA for challenging the promotion of R-3 to the post of Administrative Officer, are:-

(i) The applicant is senior to R-3 admittedly and he possesses the necessary qualification and experience to the post of Administrative Officer. Hence, overlooking his seniority and experience, promoting R-3 is irregular and arbitrary.

(ii) Both he and R-3 do not possess the service eligibility condition as provided for in the recruitment rule which is extracted above. In that case, the experience gained by the applicant due to his ad hoc promotion as Accounts/Administrative Officer earlier in SPP had to be considered instead of giving weightage to the service rendered by R-3 in his earlier parent organisation namely Mint, Bombay. Service rendered only in the SPP organisation should be taken note of and not the services in the earlier organisation - Mint.

(iii) In case the service eligibility condition is to be adhered to and none of the candidates who were considered for promotion for the post of Administrative/Accounts Officer possess that qualification,

1

deputationists, including the applicant. This review will be done by respondent No.1 within a period of two months from the date of receipt of this order. Thereafter in accordance with the seniority in the grade of Accountant following the orders of regularisation issued in accordance with the directions given above, the cases of the applicant and respondent NO.3 will be considered for promotion to the post of Accounts Officer/Administrative Officer as per rules."

18. The date of regularisation of both the applicant and R-3 as Accountant in SPP is to be treated as 30.6.87. The recruitment rules for the post of Accounts/Administrative Officer was issued by Government of India, Ministry of Finance, Department of Economic Affairs by notification dated 5.8.85 which was published in Part II, Section 3, Sub section (1) of the Gazette of India which is enclosed as Annexure 9 to the OA. The post of Accounts/Administrative Officer is a selection post and the service eligibility condition for promotion to that post is given in column 12 of the recruitment rules. The eligibility condition as given in column 12 reads as below:-

Promotion:

(i) Accountant with 5 years regular service in the Grade;

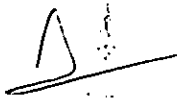
(ii) failing (i) above Accountant with 8 years combined regular service in the



21. The learned counsel for the applicant contends that the above consideration is erroneous and only the service put in by them in SPP should be considered. The learned standing counsel for the official respondents submitted that the service of the applicant as HC in Mint, Hyderabad was regularised only with effect from 7.4.82 whereas the regular service as HC of R-3 in Mint, Bombay, started from an earlier date namely from 10.4.78. On that consideration, R-3 was deemed to have possessed the service eligibility condition whereas the applicant had not possessed the eligibility even on that basis. It is further submitted by learned counsel for the applicant that the similar consideration was taken even in the case of Shri Devendradas when he was promoted as Accounts Officer. As a precedent had already been set up in a situation which arose in this case, the rejection of the candidature of the applicant on that basis cannot be termed as arbitrary. No injustice has been done to the applicant by following that principle.

22. We had called for the minutes of the DPC meeting for the Group-B promotion of Administrative Officer dated 24.2.93. The minutes was produced and returned back after perusal. The relevant portion of the minutes of the DPC held on 24.2.93 is reproduced below:-

"But in the Security Printing Press, in cases of classified staff who were



then, the power of relaxation available to the authorities in para 6 of the Recruitment Rule notification has to be exercised. Without exercising that power, the eligibility condition decided on the basis of the service in the earlier parent organisation is not proper. As the DPC relied on the service put in by R-3 in Mint, Bombay, his selection for the post of Administrative Officer has become void.

20. It is an admitted fact that the date of regularisation as Accountant in SPP of both the applicant as well as R-3 is 30.6.87. On that basis, both of them do not fulfill the first eligibility condition of Accountant with five years regular service in the grade for promotion to the post of Administrative Officer. The second eligibility condition of Accountant with 8 years combined regular service in the grades of Accountant/HC/Cashier is also not fulfilled by both of them for promotion to the post of Administrative Officer as on 15.6.89, the crucial date of promotion as directed by this Tribunal. Hence, it is evident that both of them do not fulfill the necessary recruitment rule of service eligibility for promotion. It is stated that the DPC in view of the above position took into consideration the earlier service rendered by both of them in the Mint, Hyderabad where the applicant had worked earlier and Mint, Bombay where R-3 had worked before coming on deputation to SPP.

15

eventhough he has been detemined as on
22.12.1992 to be junior to Sri N.S.
Ranganath."

The submission of the learned counsel for the official respondents was found to be same as that of the DPC. The point to be probed into is whether such a consideration is a valid one or not. The learned counsel for the applicant submits that the above consideration of the DPC is against the recruitment rule and is also not borne by rules.

23. When two views are possible, the one which overrides the rules/constitutional provision has to be rejected. But, in our opinion both the views are possible and both of them do not contravene any rules or regulations. When the DPC took the view as stated above in view of the precedent under such circumstances, the same cannot be held as arbitrary or irregular or erroneous. The applicant cannot insist that his view only should prevail. Even if his view is taken, whether the issue can be solved is to be examined. As on 15.6.89 both do not possess the necessary eligibility criteria. The applicant submits that in view of his experience as Accounts Officer/Administrative Officer earlier in that organisation, he has an edge over R-3 and had to be considered as possessing more experience than R-3 and that he should be preferred for the post of Administrative Officer. As can be seen from the narration of this case, even R-3 worked on adhoc basis as Administrative/Accounts

intially taken on deputation basis from other Mints, the previous similar service was taken into account in the matters of regularisation and promotion. One such case is that of Sri K.Devendrudu, at present Accounts Officer who was promoted only after taking into account the combined regular service rendered as Cashier and Accountant both in India Government Mint, Hyderabad and Security Printing Press, Hyderabad. DPC then decided to consider their service in their previous parent departments also for eligibility purposes.

When such regular service rendered in the previous parent deparmtent is also considered, then it is seen from the records that Sri HJK Murthy was regularised as Head Clerk in India Government Mint, Bombay with effect from 10.4.1978 and Sri NJS Ranganath was regularised as Head Clerk in India Government Mint, Hyderabad with effect from 7.4.1982. With this, as on 15.6.1989, only Sri HJK Murthy can be said to be in the zone of consideration for promotion as he has more than the required 8 years of regular combined service as Head Clerk and Accountant, eventhough Sri NS Ranganath has been determined to be senior to Sri HJK Murthy in the Security Printing Press, Hyderabad. The DPC therefore decided to consider the case of Sri HJK Murthy alone, as the only eligible candidate,

1

condition, he was over looked.

24. In case the OA is allowed and the promotion of R-3 as Administrative Officer is set-aside on the premise that R-3 also does not possess the service eligibility condition, will that enable the applicant to occupy that seat? The applicant is also ineligible as he has not fulfilled the eligibility condition provided under the recruitment rule in regard to the years of service put in the lower cadre of Accountant/HC/Cashier. Hence the next question arises for relaxation of that eligibility condition.

25. The next contention of the applicant is that in case both he and R-3 do not possess the eligibility condition, then the respondents should have taken recourse to the power to relax that condition and without resorting to that, straightway deciding the case on the basis of the earlier Mint service has to be held as one-sided to assist R-3. Even the Ministry had a similar view as can be seen from the Ministry's letter dated 7.11.90 submits the learned counsel for the applicant.

26. Para 6 of the notification dated 5.8.85 reads as below:-

Power-to-relax-

Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing in consultation

Officer. It is to be noted that their officiation as Administrative/Accounts Officer on adhoc basis were fortuitous. Fortuitous officiation cannot be equated to regular service. Whether experience gained by that fortuitous promotion will equip them with necessary experience as an alternate to the shortage of service for fulfilling the eligibility condition? If in the opinion of the DPC, the service rendered by them in their earlier organisation is a better substitute for fulfilling the eligibility condition instead of considering the adhoc service, the same cannot be challenged. If any malafides are shown in that consideration by the DPC, then the applicant can question that consideration. No malafide consideration has been attributed to the DPC. As a matter of fact, the authorities in SPP tried to continue the applicant as Administrative Officer when he was working on adhoc capacity even though the Ministry advised the G.M., SPP to revert him and send him back to his parent cadre - Mint, Hyderabad. But that was not done. Hence, it cannot be said that the G.M., SPP, Hyderabad, who was the Chairman of the DPC was hostile to the applicant. When the local official is not hostile, then officials who came from Delhi, could not be said to be biased against the applicant. Hence, we are of the opinion, the view taken by the DPC is on bonafide considerations and that view cannot be said to be erroneous. Even though the applicant was senior to R-3, as he has not fulfilled the eligibility

1

manner and nowhere its importance is stressed.

29. Even presuming that the power of relaxation is to be exercised, the case of R-3 cannot be prejudiced at this point of time as R-3 had already retired on 31.5.94 after shouldering the higher responsibility and his final settlement had been disbursed on the basis of his last pay drawn. In view of that, there will be no point in further examining this contention. We do not propose to express any view in this connection.

30. The applicant submitted that his next promotion is to the post of Chief Administrative Officer and for that promotional post also, certain minimum number of years is required as Administrative Officer before being considered for promotion. He was promoted as Administrative Officer only in the year 1995 on adhoc basis and his case is pending with the Ministry for regularisation in that post. If he is not posted as Administrative Officer from 15.6.89 onwards when R-3 was promoted as Administrative Officer, his chances for consideration for promotion to the post of Chief Administrative Officer may be marred. Hence, it can also be presumed that the present OA is to enable him for consideration for the higher post. No direction in this connection is necessary from us in this OA. The applicant keeps on urging that there is a power to relax eligibility condition by the appropriate respondent and that power has to be used. If so, he can request the authorities concerned to use that power for considering him to the

A

with UPSC, relax any of the provisions of these rules with respect of any class or category of person".

27. Shri Ram Mohan Rao, learned counsel for the respondent No.3 has submitted that relaxation cannot be claimed as a matter of right. It is not of gratis. It should be exercised in public interest. Individuals cannot claim it as a matter of right. ^{Recruitment} ~~Recruitment~~ rules cannot be relaxed as held by the Supreme Court in Rizvi's case. Only conditions of service can be relaxed.

28. A perusal of the power for relaxation on recruitment rules indicates that it is not an absolute provision. It is only an enabling provision to tide over certain situations which in the opinion of the Government is necessary or expedient. If such a situation can be tidied over by other means, which in the opinion of the Govt. is a better and efficacious solution, then, an individual cannot insist on exercising the rule of relaxation. In the present case, the DPC thought it fit to overcome the obstacle in the selection by taking the earlier service as such a solution had a precedent. Hence, it cannot be said that the DPC or the Govt. should have used only the power of relaxation. Further, nowhere it is brought out in the OA that the use of that power is necessary in the public interest. Even in his representation dated 1.3.93 addressed to R-2, the applicant has not mentioned anything in regard to this contention. Even in the OA, this contention is only in a very passing

1

not consider this as a worthwhile argument. Hence, we reject this contention also.

33. In view of the foregoing, we do not see any reason to set-aside the DPC proceedings and grant the consequential relief to the applicant as prayed for in this OA.

34. In the result, the OA is dismissed as devoid of merits. No costs.

प्रमाणित सही
CERTIFIED TO BE TRUE COPY
[Signature]
राष्ट्रपति सचिवारी
COURT OFFICER
केन्द्रिय प्रशासनिक न्यायालय
Central Administrative Tribunal
हैदराबाद संस्थान
HYDERABAD BENCH

Sd/-
H. A. G. C.
V.C.

[Handwritten initials]
H. K. R. M.
M. (A)

higher post.

31. The last contention of the applicant is that the DPC was not constituted properly in accordance with the rules. The only drawback pointed out by him is that the Deputy Secretary (Admn.) was not present and that absence made the recommendations of the DPC null and void. The respondents have relied on the provisions of the para-15 of Govt. of India OM No.22011/5/86-Estt.(D) dated 10.4.89 of the DoP to state that the "proceedings of the DPC shall be legally valid and can be acted upon notwithstanding the absence of any of it's members other than the Chairman, provided the member was duly invited but he absented himself for one reason or other and there was no deliberate attempt to exclude him from the deliberation of the DPC and provided further that the majority of the members constituting the DPC are present in the meeting."

32. The DPC was constituted with 4 members namely G.M, SPP as Chairman, Deputy Secretary Incharge of Mints and Presses Division as Member, Deputy Secretary Incharge of Administrative Division as another member and a representative of the reserved community. Deputy Secretary Incharge of Administrative Division was absent. This itself should not be held as a reason to set-aside the DPC proceedings. The OM of the DoP referred to above is clear on this aspect. The applicant submits that the Deputy Secretary who attended the DPC meeting was only a stop-gap arrangement and that vitiates the DPC proceedings. We do

A