

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: HYDERABAD

OA.337/99

Dated: 6-2-2001

Between

Gurishranjan Pal

: Applicant

and

1. Secretary
Ministry of Defence
Govt. of India,
New Delhi

2. Director General of EME (EME Civ.1)
Master General of the Ord. Branch
Army Headquarters, DHQ PO
New Delhi 110011

3. The Commandant
Military College of EME
Trimulgherry PO
Secunderabad 500015

: Respondents

Counsel for the applicant

: Devashish Das
Advocate

Counsel for the respondents

: V. Rajeswara Rao
CGSC

Coram

Hon. Mr. Justice V. Rajagopala Reddy, Vice Chairman

Hon. Mr. M.V. Natarajan, Membr (Admn.)



Order

Oral order (per Hon. Mr. Justice V. Rajagopala Reddy, Vice Chairman)

The applicant is aggrieved by his non-promotion from the post of Lecturer to the post of Assistant Professor with effect from July, 1999. He further seeks a direction for constituting Departmental Promotion Committee (DPC) for the said purpose. The facts of the case in short are as follows:

The applicant was initially appointed in 1983 as Lecturer in the Department of Mech. Engg. in the Military College of Electrical and Mechanical Engineering, (ME MCME for short) Secunderabad. The applicant is governed by the rules framed by the Corps of Electrical and Mechanical Engineers (Professor, Assistant Professor, & Lecturer) Recruitment Rules, 1975, framed under Article 309 of the Constitution. The educational qualifications required for the post of Lecturer was a second class degree in Mech. Engg. or equivalent. The applicant was having the second class BE. The essential qualification for the post of Assistant Professor was i) at least second class degree in the Engineering equivalent and Post graduation degree in appropriate branch of Engineering from a recognized university with specialisation in one or more specific subjects, according to the requirements of the post to be filled up, with five years experience in research work or professional or teaching in degree level. The qualifications are relaxable at the discretion of UPSC. The selection to the post of



Assistant Professor was by way of promotion, failing which by way of Direct Recruitment, on the basis of the assessment by the DPC.

3. The applicant initially had a Bachelors degree in Mechanical Engineering and later obtained Masters degree in Mechanical Engineering in July 1994 in the appropriate subject and thus became qualified for promotion to the post of Asstt. Prof. under the rules. He submitted an application on 30.7.94 to the R-1 informing him about the obtaining ME degree and to consider his case for promotion since several posts of Asstt. Profs. were lying vacant for a long time. On 29.11.94 R-2 informed R-3 and the applicant that the "DPC proposal for promotion of Lecturer Shri Gunishranjan Pal to the grade of Asst. Prof. have already ^{been} forwarded to the UPSC through Ministry of Defence and as and when the results are published the results will be intimated to you accordingly." Again R-2 through letter dated 2.4.95 informed R-3 that the DPC proposal for promotion of the applicant to the grade of Asstt. Prof. submitted by the DG to the Ministry of Defence was still under consideration and as and when the same was finalised the results would be intimated to him accordingly. Though the applicant made several representations thereafter requesting to intimate ~~whether~~ the results of his promotion. There was absolute silence from the respondents' end.

4. Left with no other alternative, the applicant filed OA.1338/95 on 1.11.95 seeking to finalise and intimate the result of his promotion to the post of Asst. Prof., within two months. To the said OA the respondents filed reply statement stating that the existing rules had been superceded by the letter of the Ministry of Defence dated 15.12.94 with retrospective effect from 1.4.86, under which the method of selection to

the post of Asstt. Prof. was to be by way of Direct Recruitment alone. Hence, the OA, at the request of the applicant, was dismissed as infructuous, by order dated 3.3.96.

5. Thereupon the applicant made a representation dated 10.8.96, aggrieved by the action of the respondents in superceding the rules, requesting to promote him by convening DPC in terms of existing rules in SRO NO.264 dated 25.7.1975. His representation, however, was turned down stating that the applicant could not be considered for promotion by the DPC, by their letter dated 21.4.98. Thereafter the applicant filed the present OA.

6. A preliminary objection was taken by the respondents that the OA was barred by res-judicata in view of the orders passed in OA.1338 of 1995. The court, however, did not uphold the plea stating that ^{as} the subject matter was not finally decided between the parties and hence the OA was directed to be heard on merits, by its order dated 14.8.2000.

7. The learned counsel for the respondents, Sri Rajeswara Rao, submits that though the applicant, as per the Recruitment Rules of 1995 was entitled for consideration for promotion to the post of Asst. Prof., as the Ministry of Defence in their letter dated 15.4.1994, have superceded the said rules, he cannot now rely upon them. He submits that the Ministry of Defence have also decided to revise the pay scale of Civil Teaching professional posts of College of Military Engg. Colleges in Technical Training Institutes (TTIs) as per the All India Council for Technical Education (AICTE) norms. According to the said norms a Lecturer would be placed as Senior Lecturer on completion of five years service as Selection Grade Lecturer and on completion of 16 years of service (14 years in case of Post Graduate degree

holders) under Career Progression Scheme. The existing recruitment rules have been superceded with effect from 1.4.1986 and the method of promotion from the post of Lecturer to the post of Asst. Prof. has been done away with and the Asst. Prof.s are to be recruited only by way of direct recruitment. Hence, the applicant though he was having the Master degree in Engg. was not entitled to be considered for promotion to the post of Asst. Prof. According to AICTE the applicant was considered by the Screening Committee and he was placed as Senior Lecturer with retrospective effect from 21.7.92 on completion of 8 years and further he was placed as Selection Grade Lecturer (Rs.3700-5700) with effect from 21.7.97 on completion of 14 years of service. Thus the applicant had obtained full benefits under the AICTE package. As the applicant had got full benefits under AICTE norms by virtue of the letter of Ministry of Defence dated 15.4.1994 the applicant cannot seek promotion as under the same norms the rules have been superceded taking away all the rights of the applicant for promotion.

8. It is the contention of the learned counsel for the respondents that the applicant cannot blow hot and cold.

9. We have given careful and anxious consideration to the pleadings as well as arguments advanced by the learned counsel on either side.

10. It is not in controversy that the Recruitment rules are statutory having been framed under Article 309 of the Constitution and the parties are governed by them. The applicant's career progression to the post of Asst. Prof. is governed by the above rules. It is also not in dispute that the applicant had obtained his Masters degree in 1994 and thus he was fully eligible thereafter for consideration for promotion to the

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post of Asst. Prof. having completed 5 years of service as Lecturer. If the rules continue to govern he should have been considered for promotion to the post of Asst. Prof. if there are vacancies of Asst. Prof. in 1994. In fact, it is seen from the foregoing paragraphs that the applicant's case for promotion did come up for consideration in 1994 before the DPC and recommendations were sent to UPSC as regards his claim for promotion. But thereafter, there was a break and nothing was heard as to his promotion in spite of several representations made by him. He therefore approached this Tribunal in OA.1338/95 praying for the relief in the following terms:

"Hence in the interest of justice it is prayed that this Hon'ble Tribunal be pleased to direct the respondents herein to finalise and intimate the result of the applicant for promotion to the post of Asst. Prof. with effect from 30.7.94 within two months and pass such other order or orders that are deemed fit and proper in the circumstances of the case."

11. This OA was however, dismissed as infructuous at the request of the applicant. The contention that this OA constituted res-judicata to the present OA was however rejected. We think it was rightly rejected as the only prayer in that OA was to intimate the result of his promotion.

12. The prayer in the present OA is entirely different.

13. It is the case of the applicant that he came to know about the supercession of the rules by the letter of the Government dated 15.4.94 for the first time in the reply filed and thereafter he made a representation, which was rejected.

14. Thus, according to the applicant, the cause of action of this case arose only after representation having been rejected on 21.4.98.

15. The crucial document in this case that has to be considered is the letter of the Government dated 15.4.94, which reads as under:

No.1(3)/89/D(Civ.1), Govt. of India, Ministry of Defence, New Delhi dated 15th April 1994.

To The Chief of the Army staff

Sub : Extension of AICTE pay scales to the Civilian Professional staff of the College of Military Engineering Pune, Military college of Telecommunication Engineering,, Military college of Electronics and Mechanical Engineering, Secunderabad

Sir,

I am directed to refer to this Ministry's letter No.1(5)/85/D(Civ.I) dated the 10th July, 1986 as amended by corrigendum of even number dated 12.6. 1987 modifying the revised pay scales for the civilian professorial staff of the above named Defence Technical Training Establishments. Subsequently the pay scales for the Teaching staff in the aforesaid Institutions was revised as follows on the basis of the 4th Pay Commission recommendations vide notification dated 20.3.87:

a) Assistant Professor Rs.3000-100-3500-125-5000

b) Professor/Professor Selection Grade Rs.4500-150-5700.

2. The Government revised the pay scales of Teachers etc. in Engineering Colleges and other degree level Technical Institutions w.e.f.1.1.1986 vide Ministry of Human Resource Development (Deptt. of Education) letter No.F.6-1/88-T5 dated 28.2.89. The question of prescribing the AICTE scales of pay for the civilian teaching posts on the above named Defence Technical Training Establishments had been under consideration of the Government. The President is now pleased to revise the pay scales of the Civilian teaching posts in the above named three Training Establishments w.e.f. 1.4.86 as

Name of the post pay	Existing scale of pay	Revised scale of
a) Lecturer 4000	2200-75-2800-100-4000	2200-75-2800-100-

b) Sr. Lecturer 5000	Not existing	3000-100-3500-125-
c) Selection Grade Lecturer 5700	Not existing	3700-125-4950-150-
d) Asstt. Professor	3000-100-3500-125-5000	-do-
e) Professor 7300	4500-150-5700	4500-150-5700-200-

3. As regards existing of revised scales to the teaching staff ... as on 1.4.86 and those appointed thereafter further communication will follow.

4. In the same career progression in the case of Lecturers will be adopted in the Institutions as approved by the AICTE set up. For this purpose, a Screening Committee will be set up by this Ministry wherever necessary to consider the cases of Lecturers keeping in view the guidelines on the subject contained in the AICTE package.

5. The existing Recruitment Rules for appointment to the vacant posts of Lecturers, Asstt. Professors, and Professors will stand superseded to the extent they are inconsistent with the qualifications and method of recruitment as prescribed under the AICTE package after 1.4.86. The Recruitment Rules for the posts of Lecturers/Asstt. Professors/Professors shall provide for the same Recruitment qualifications and methods of recruitment (without any modifications) as approved by AICTE at these levels.

6. The AICTE package without any modification in so far as pay, Career Progression and qualification are concerned will be adopted by these institutions in future. All other aspects will continue to be governed as hithertofore.

7. This issues with the concurrence of Finance Division vide No.2(2)/86-AG(240-PA) dated 8.4.84."

16. A close reading of the above letter reveals that the Government have decided to restructure the posts and revise the pay scales of the applicants and others who are working as teaching staff in the Defence Training establishments with effect from 1.4.86. By virtue of this restructure of posts and revision of pay scales the following position emerges: Earlier under the Recruitment Rules, the structure of posts was -

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Lecturer, Assistant Professor, and Professor. Now, in its place two intermediary posts have been created i.e. Senior Lecturer and Selection Grade Lecturer. The pay scales of the grades have been revised with effect from 1.4.86. Without stopping at that para-5 of the above also seeks to supersede the existing recruitment rules with retrospective effect from 1.4.86 for filling up of the posts lying vacant from 1.4.86 and the method of promotion was totally altered in accordance with AICTE package. By virtue of which the method of recruitment of Assistant Professor by way of promotion from the post of lecturer has been shelved and the only method that was accepted by AICTE was by way of Direct recruitment. Placing heavy reliance on this letter, the learned counsel for the respondents submits that the applicant's case for promotion, which was pending before the UPSC could not be 'progressible'.

17. The only question therefore is whether the Government, by way of Executive order could alter, supersede or amend the statutory recruitment rules to accord with the recommendations made by the AICTE.

18. Two points have to be considered to answer this question. One, whether the AICTE is competent to supersede or alter the Recruitment Rules, and two, whether the Government by a notification in the cloak of revising the structure of posts and revision of pay scales can alter or supersede the statutory Recruitment Rules.

19. 1st Point

The All India Council for Technical Education Act of 1987 was enacted to provide for the establishment of All India Council for Technical Education with a view to the proper planning and co-ordinated development of the Technical Education system through out the country, the promotion of qualitative improvements of such

education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matter connected therewith. The second chapter deals with the establishment and the third deals with the Powers and Functions of the Council. Section 10(i) contemplates and provides for -

“lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;”

Some of the other provisions provide for taking steps for guidelines to admission of students to technical education and universities. Thus, a perusal of the above only shows that the council could only lay down norms and standards for the course and providing guidelines for admission to the students. Apart from the above, we do not find in any of the clauses under Section 10 giving powers to the Council to suggest altering the Recruitment Rules as to selection of the employees. Further the council is only a recommendatory body and unless the Government accepts the recommendations they are not even binding upon the Government. The letter dated 15.4.94 however seeks to supercede the Recruitment rules on the basis of the AICTE norms. Firstly, the AICTE as seen supra, has no role to play in framing of the Recruitment Rules and even if such suggestion is made it is not binding on the Government to accept the same. In this case, the Government has however accepted the recommendations of the Council for modification/supersession of the Recruitment Rules. The Recruitment Rules are passed under the proviso to Article 309 of the Constitution by the President of India. They were passed as early as in 1975

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governing the conditions of the applicant and they have this Constitutional sanctity for their validity. The Government exercising its executive power cannot supersede the rules passed by the President exercising his power under the Constitution.

20. The 2nd Point

This point is directly covered by the judgement of the Supreme Court, in the Government of Andhra Pradesh and another Vs. Dr. Murali Babu Rao and another, reported in 1988(2) SLR 182. In that case, it was held that considering promotion from the post of Asstt. Professors of Cardiology to the post of Professor of Cardiology, recommendations of Medical Council of India, were only recommendations in nature and they cannot override the rules framed under Article 309 of the Constitution. The State Government was under the obligation to draw the panel for promotion in conformity with the recruitment rules framed under Article 309 of the Constitution and not on the basis of recommendations of Medical Council of India. It was also held that it was not for the Medical Council for prescribing qualifications for recruitment to the posts of Professors, Readers and Lecturers. It can only lay down broad guidelines. Therefore, such qualifications have ~~to be~~ necessarily to be prescribed by the Rules framed under the proviso to Article 309. Right to be considered for promotion is a condition of service and it can only be regulated by a rule framed under the proviso to Article 309. If the recommendations of the Medical council in the matter of promotion to the professorial posts in medical colleges were considered as only recommendation and had no overriding power over the recruitment rules, the role of the AICTE in modifying or superseding the recruitment rules cannot have any such overriding power.



21. Further, the circular has superseded the rules with retrospective effect from 1.4.1986. We are of the view that the retrospective effect of this letter is also bad. Normally even a rule cannot take away the vested rights by giving retrospective effect to the rules and that normally the rule comes into effect from the date it comes into force. The letter cannot be treated as a rule framed under statutory provision. As held supra, the letter cannot take away the vested rights of the employees, as it is only an executive order. The applicant was appointed in 1983 on the basis of the notification issued calling for applications for appointment as Lecturer with prospects of promotion to the post of Asstt. Prof., on completion of 5 years of service. Surprisingly that has now been washed away by the impugned letter. Had there been no such prospective promotion to the higher posts, the applicant would not have applied for this post. He could have sought his career progression elsewhere. No person would seek to be appointed for a post, which has no career prospects. Thus even on the Principles of Legitimate Expectations, the letter of 15.4.94 appears to be illegal. On both the above grounds we have no hesitation to hold that the above letter dated 15.4.94 which superseded rules and taken away the prospects of promotions of the applicant cannot be validly relied upon by the respondents.

22. The learned counsel for the respondents, however, contends that the applicant having taken advantage of the package under AICTE by getting two higher grades of pay in the grades of Senior Lecturer and Selection Grade Lecturer and having drawn higher pay, under the very same letter, cannot now turn round and question that part of the letter which was disadvantageous to him. This contention is devoid of any substance.



23. It should be remembered that the AICTE was empowered to suggest the restructuring of the posts and consequent revision of pay scales and the same has been accepted by the Government. The applicant has no grievance for that. Accordingly, the applicant was entitled to be placed in the higher grades. What the applicant is aggrieved of is the mode of ^{recruitment} reimbursement to the post of Assistant Professor by superseding the Recruitment Rules. The applicant is therefore, fully justified in questioning that part of the order, which the Government could not pass lawfully. It was wholly impermissible for the Government to have superseded the Recruitment Rules with effect from 1986 by passing an Executive order in 1994 and such course of action was successfully challenged.

24. The applicant's case for promotion was considered by the respondents but was not finalised on the ground of supersession to the Recruitment rules. As we have held now that the letter cannot supersede the Recruitment Rules the respondents are liable to consider the case of the applicant afresh, by convening a Departmental Promotion Committee, to the post of Assistant Professor in accordance with the Recruitment rules, 1975 against the then existing vacancies of Asstt. Prof. right from the day when the applicant was eligible for such considerations till the recruitment rules are now amended under Article 309 of the Constitution in pursuance of the AICTE recommendations in 2000 by enacting Military College of Electronics and Mechanical Engineering (MC EME), Secunderabad, came into force.

25. The OA therefore succeeds and respondents are directed to consider the case of the applicants for promotion to the post of Asstt. Prof. with effect from July, 1994 by constituting Departmental Promotion Committee, within a period of three months



from the date of receipt of this order in the pay scale of Rs.3700-5700 and grant all arrears of salary with attendant benefits to which he may be entitled to, from the date he was found eligible.

32. We, however, award no costs. OA is accordingly allowed.

M. Natarajan
(M.V. Natarajan)
Member(Admn.)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice Chairman

dated : 6 February, 2001
dictated in Open Court

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDRABAD BENCH:HYDERABAD

COPY TO

1ST AND 11ND COURT

1. HVVSRJ

TYPED BY
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2. HBSJP:MEMBER (JUSL)

3. HMVN :MEMBER: (ADMIN)

THE HON'BLE MR JUSTICE V. RAO GOPAL REDDY,
VICE-CH. JUDGE

4. D. T. (ADMIN)

THE HON'BLE MR BS. JAI PRAMODHWAR,
MEMBER (JUSL)

5. SPARE

THE HON'BLE MR MV. NATARAJAN
MEMBER: (ADMIN)

6. ADV. CATE

7. STANDING COUNSEL

DATE OF ORDER: 6/2/2001

~~MR/DA/CP. NO.~~

IN

CA. NO. :

337/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C. P. CLOSED

R. A. CLOSED

DISP S O F WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

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Central Administrative Tribunal
दस्तावेज / DESPATCH
7 MAR 2001
HYDERABAD BENCH