

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH.

Original Application No.562/2003.
Jaipur this the 5th day of January 2005.

CORAM : Hon'ble Mr. M. L. Chauhan, Member (J).
Hon'ble Mr. A. K. Bhandari, Member (A).

Dr. G. S. Somawat S/o Late Shri K. R. Somawat Aged 50 years, Director, Office of the National Commission for Scheduled Castes & Scheduled Tribes, State Office, Jaipur, R/o C-62 Balnagar, Kartarpura, Jaipur 203006.

... Applicant.

Applicant present in person.

Vs.

1. Union of India through the Secretary, Ministry of Social Justice & Empowerment, A-Wing, 6th Floor Shastri Bhavan, New Delhi 110 001.
2. Union of India through the Secretary, Ministry of Personnel, Public Grievances & Pensions, North Block, New Delhi 110 001.

... Respondents.

By Mr. Hem Chand, Proxy counsel for
Mr. Bhanwar Bagri counsel for the respondents.

: O R D E R :

Per M. L. Chauhan, Judicial Member.

The applicant has filed this OA thereby praying for the following reliefs :-

"(i) That the respndent No.1 may be directed to amend the old Recruitment Rules 1986 for the post of Director (Joint Cadre) for Scheduled Castes and Scheduled Tribes and to ensure to incorporate all the subsequent charges, and to consider the applicant for promotion to the post of Director as per the revised seniority and service Recruitment Rules.

ii) Any other order or orders as are deemed fit and proper in the interest of justice and the facts and circumstances of the case may kindly be passed in favour of the applicant."

2. Briefly stated, the applicant is substantive

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holder of the post of Deputy Director, Office of the Director for Scheduled Castes and Scheduled Tribes. Presently, he is working as Director, Office of the National Commission for Scheduled Castes and Scheduled Tribes, State of Jaipur, on ad hoc basis. It is stated by the applicant that several posts of Director were lying vacant in the year 1993-94 and onwards but he was not considered fit for promotion as he was not having 5 years of regular service as Deputy Director. According to the Recruitment and Promotion Rules for the post of Director (Joint Cadre) method of recruitment is 75% by transfer on deputation and only 25% by promotion from the Deputy Director (Joint Cadre).

3. The grievance of the applicant is that at the relevant time he was the only affected officer and belongs to reserved category and in the Recruitment Rules there was no provision regarding relaxation of qualification in respect of Scheduled Castes and Scheduled Tribes category. Had there been provision regarding relaxation of eligibility criteria of 5 years regular service, the applicant could have been promoted against the vacant post of Director (Joint Cadre) from promotion quota. In this OA, the applicant has contended that the Joint cadre Recruitment Rules for the post of Director (Joint Cadre) has not been revised since 1986 as per the general guidelines issued by the DOPT, subsequent O.Ms dated 23.11.1989, 1995, 1998 and O.M. No. 14017/6/2002-Estt (RR) dated 4.8.2003 which stipulates about comprehensive review and revision of Recruitment Rules. The applicant has further alleged that in terms of the aforesaid instructions issued by the DOPT it was

44

incumbent upon the competent authority to review the Recruitment Rules once in 5 year with a view to effecting such changes as are necessary to bring them in conformity with the changed position. It is on these basis, the applicant has alleged that the cadre controlling authority of the applicant has not carried out the necessary required amendment in the Recruitment Rules for the post of Director (Joint Cadre) even after a lapse of 18 years period which has adversely affected the applicant's promotion.

3.1 The applicant has further submitted representation to the Secretary, Ministry of Social Justice and Empowerment, New Delhi, through proper channel vide letter dated 4.11.2003 thereby requesting for revising the Recruitment Rules for the post of Director and consider the case of the applicant for promotion to the post of Director on the basis of revised Recruitment Rules with retrospective effect. The copy of the representation dated 4.11.2003 and 5.11.2003 have been placed on record at Pages 18, 19 & 20 of the OA. The applicant has also placed on record various representations, which are earlier to the aforesaid representations. It is on these basis the applicant has filed this OA thereby praying for the aforesaid reliefs.

4. In the reply, it has been stated that the Recruitment Rules for the post which comes under the purview of Ministry of Social Justice & Empowerment and National Commission for Scheduled Castes and Scheduled Tribes are to be revised in consultation with National

402

Commission for Scheduled Castes & Scheduled Tribes and DOPT. Thus, the action of the Ministry of Social Justice and Empowerment is not arbitrary, unreasonable and illegal. It is further stated that the case of the applicant for promotion in 1993 could not be considered as he was not eligible for promotion to the post of Director in Joint Cadre in 1993 as in view of the decision rendered by this Tribunal in OA No.536/1995 decided on 02.03.2001, in which it has been clearly laid down that the qualifying service for promotion to the post of Director in case of the applicant should be counted from the actual date of joining i.e. 09.04.1991.

5. In reply to Para 5(D), the respondents in their reply have stated that there was no specific direction by the Tribunal in the earlier judgement dated 02.03.2001 regarding amendment to be carried out in the Recruitment Rules and the Government is of the opinion that there is no ground for amending the Recruitment Rules. In order to substantiate the plea taken by the respondents, the original record was called for. However, despite opportunities granted to the respondents, the relevant record had not been made available, as such it could not be concluded whether the Government has taken a conscious decision not to carry out amendment in the Recruitment Rules for the post of Director (Joint Cadre).

6. We have heard the applicant, who is present in person, and the learned counsel for the respondents.

402

7. The sole question which requires our consideration is whether the mandamus can be issued to the respondents to amend the Recruitment Rules in the light of the aforesaid OM issued by the DOPT which emphasize that the Recruitment Rules should be reviewed once in 5 year with a view to effect such change as are necessary to bring them in conformity with the changed position, including additions to or reductions in the strength of the lower and higher level posts and also to insert Saving Clause thereby to protect the interest of Scheduled Castes and Scheduled Tribes regarding age relaxation and other concessions which have been provided to these categories in accordance with the order of Central Government from time to time in this regard.

8. According to us, the matter is no longer res-integra. The mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgement over the wisdom of the executive in choosing the mode of recruitment or the categories from which recruitment should be made as they are matters of policy decision falling exclusively within the purview of executive. This is what the Apex Court has held in the case of State of A. P. v. V. Sadanandam AIR 1989 SC 2060. Thus, the question of filling up of the post by person belonging to IAS service or officers under the Central Government or State Government by transfer on deputation basis by prescribing 75% percentage quota and

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remaining 25% quota from Deputy Director for Scheduled Casts and Scheduled Tribes with 5 years regular service in the grade is a matter of administrative necessity and exigency and this Tribunal cannot go into such question, more particularly, when no challenge has been made to the Recruitment Rules on the ground of arbitrariness and discrimination.

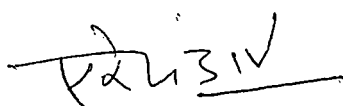
9. Thus, we are of the firm view that no mandamus can be issued to the respondents to amend the rule, even if, the Ministry of DOP&T has issued instructions to carry out the review of Recruitment Rules once in 5 years with a view to effect such changes as are necessary to bring them in conformity with the changed position, including additions to or reductions in the strength of the lower and higher level posts and also to insert a saving clause thereby protecting the interest of Scheduled Castes and Scheduled Tribes and other categories to whom certain concession has been given by the Central Government from time to time. This is what the Supreme Court has held in the case of Aeltemesh Rein vs. Union of India AIR 1988 SC 1768. That was a case where writ petition in the nature of mandamus was filed before the Apex Court thereby praying that the direction be issued to the Central Government to consider the enforcement of Section 30 of Advocate Act. The Apex Court has held that it is not open to the Supreme Court to issue a writ in the nature of mandamus to the Central Government to bring a statute or a statutory provision into force when according to the said statute the date on which it should be brought into force is left to the discretion of the Central Government. It was further held that but that would not come in the way of the

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Supreme Court issuing a writ in the nature of mandamus to the Central Government to consider whether the time for bringing the Statute or provision thereof into force has arrived or not and every discretionary power vested in the Executive should be exercised in a just, reasonable and fair way i.e. the essence of the rule of law.

10. Viewing the matter from the ratio as laid down by the Apex Court in the case of Aeltemesh Rein (supra), we are of the view that the ends of justice will be met if the direction is given to the respondents to decide the representation of the applicant and to consider the matter whether necessity has arisen for carrying out the amendment in the Recruitment Rules in terms of instructions/guidelines issued by the Department of Personnel & Training vide Office Memorandum NO.AB-14017/12/87-Estt(RR) dated 18.03.1988 read with OM dated 04.08.2003 (Annexure A/5) to carry out comprehensive review of revision of recruitment rules keeping in view the inter-alia thrust of administrative reforms.

11. Accordingly, the OA is disposed of with the direction to the respondents to decide the representation dated 05.11.2003, paged 19 & 20, within three months from the date of receipt of copy of this order whether the amendment in the recruitment and promotion rules to the post of Director (Joint Cadre) should be carried out in the light of instructions issued by the DOPT vide OM Annexure A/4 & A/5. The OA shall stand disposed of accordingly with no order as to costs.



(A.K. BHANDARI)
MEMBER (A)



(M. L. CHAUHAN)
MEMBER (J)