

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 270 of 2004

this the 22nd day of November 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Bank Note Mudranalaya Shramik Sangh
and Anr.

... Applicants

(By Advocate - Shri S.D. Tiwari)

V e r s u s

The Union of India & Ors.

... Respondents

(By Advocate - Shri S.A. Dharmadhikari)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicants have
claimed the following main reliefs :

"(ii) hold the portion of the Ministry of Finance,
Department of Economic Affairs (Bank Note Press, Dewas,
Group-C Posts) Recruitment (Amendment Rules), 2002,
wherein educational qualification for the promotion to
the post of Dy. Technical Officer (Printing) has been
relaxed for the feeder line employees/Senior Operators,
vide GSR 493, as unconstitutional and ultra vires,


(iii) quash the promotion order relating to the
respondents No. 3 & 4, Annexure A-8 dated 1.2.2004 and
thereafter command the respondents to prepare and
publish separate seniority/eligibility lists as per the
distribution of posts for each grade-category of the
posts of Senior Operator with reference to the qualifi-
cation, prior to convening the departmental promotion
committee,

(iii) promote the applicant No. 2 as Deputy Technical
officer (Printing) with all the consequential benefits
w.e.f. 1.2.04."

2. The brief facts of the case are that the applicant No.
1 is representing all the better qualified Senior Operators
of the institution, which is the registered body having its
registration No. as 2919/83. The applicant No. 2 is the
immediately affected employee holding the substantive
industrial post of Senior Operator (Offset Printing) in the
Bank Note Press, Dewas, at present holds the higher seniority



in his cadre. He has been discharging his duties to the best satisfaction of his superiors. The applicant No. 2 was appointed as Junior Operator (Offset Printing) on 25.9.1984 on the basis of his qualification of diploma in printing technology. He was promoted as Senior Operator (Offset Printing) on 2 years probation on 1.5.1991 and after a successful probation he was confirmed in the service w.e.f. 1.4.1988. His seniority is maintained in the cadre of offset printing and in the gradation list showing position as on 30.6.2001 his name finds place at serial No. 3 in his cadre. Under the original recruitment rules for industrial posts published vide notification dated 21.2.1976, later on amended time to time, the post of Senior Operator in Printing wing has been classified into four categories. For the Bank Note Press, the Vth Pay Commission has strongly recommended that having regard to the qualification of graduation/diploma in printing technology, the Technical Supervisor Staff in the pay scale of Rs. 1400-2300/- may be placed in the replacement of the scale of Rs. 1600-2660/- i.e. Rs. 5000-8000/-. Further it was recommended that the next higher posts which are presently in the scale of Rs. 1600-2660/- and constitute promotional post in the corresponding streams, may be placed in the replacement of the scale of Rs. 1640-2900/- i.e. Rs. 5500-9000/-. All the above mentioned recommendations of the Commission with regard to the revision of pay scales relating to the Bank Note Press, Dewas had been accepted. Under Part-C of the First Schedule it was mentioned that grant of higher scales of pay as recommended by the Commission would be subject to the recommended changes in the recruitment rules, restructuring of cadres etc. The respondent No. 1 issued a gazette notification dated 7.12.2002 in supersession of earlier Group-C post Recruitment rules for Bank Note Press, Dewas renamed as Ministry of Finance, Department of Economic affairs (Bank Note Press, Dewas, Group-C posts) Recruitment (Amendment) Rules, 2002.



Under these rules all the posts of Deputy T-echanical officer ^{In} have been restructured and redesignated. ~~/all~~ the 4 printing wings of the post of Deputy Technical Officer, have been merged into one under the redesignation of Deputy Technical Officer (Printing) consisting of 33 posts as single cadre in a pay scale of Rs. 5500-9000/-. After such redesignation though, in order to protect the promotional interests of the Senior Operators, cadre of 33 posts has been distributed under the rules inter alia providing 10 posts to Senior Operator (Offset Printing), 11 posts to Senior Operator (Intaglio Printing), 6 posts to Senior Operator (Numerota) and 6 posts to Senior Operator (Guillotine-Cutpack), respectively. The education qualifications have been completely relaxed for such promotions for the feeder line to which the applicant No. 2 belongs. The power of making ^{relating} rules ~~/to~~ recruitment and conditions of service under the proviso to Article 309 could not be used/construed to validate unconstitutional discrimination in promotional chances of Govt. servants who belonged to the same category. The relaxation in educational qualification does not imply preparation of an unified inter-se seniority amongst all the wings of Senior Operators with sole reference to the date of completion of the prescribed qualifying service. The relaxation in the educational qualification disturbs the interse seniority of the senior operators which they are holding in their respective cadres. The respondent No. 2 intimated that an unified seniority/eligibility list has been prepared for all the posts of Senior Operators for the purposes of promotion to the redesignated post of Deputy Technical Officer (Printing). On the basis of such seniority/eligibility list, a DPC has been convened and vide order dated 1.2.2004, promoted 3 Senior Operators as Dy. Technical Officers (Printing) in the pay scale of Rs. 5500-9000/-.



Without circulating the seniority list to all the concerned employees for providing an opportunity to represent in case of any grievance, the respondents cannot convene the DPC for promotions. The applicants submitted representation dated No. 2 11.2.2004. The applicant/who is at serial No. 3 in the gradation list of Sr. Operator (Offset Printing) is eligible for promotion against that vacant post, as per the reservation prescribed in the rules of 2002. Under the proposed combined gradation list he would be pushed far back and much junior and less qualified person of other category would be promoted. The action of the respondents is not justified. Hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicants that making rules relating to recruitment and conditions of service under the proviso to Article 309 could not be used to validate unconstitutional and irrational discrimination in promotional chances of Govt. servants. He also argued that the Pay Commission recommended that grant of higher scales of pay would be subject to the recommended changes in the recruitment rules, restructuring of cadres etc. The relaxation in the educational qualification merges all the four cadres and it disturbs the inter-se seniority of the Senior Operators. He further argued that under the proposed combined gradation list the qualified senior employees would be pushed far back and much junior and less qualified person of other category would be placed above and promoted. The applicants will have to wait for another couple of years for their turn and even some of them might be superannuated waiting for their turn.

5. In reply the learned counsel for the respondents argued that there are various sections in Bank Note Press such as



Printing, Platemaking, Control, Workshop, Stores, Ink factory, etc. The main job of printing of bank notes is carried out in the printing section consisting of four sub sections i.e. offset printing, intaglio printing, numerota printing and gullotine/cutpack. There were 10, 11, 6 and 5 sanctioned posts of Deputy Technical Officer (Offset Printing), Deputy Technical Officer (Intaglio Printing), Deputy Technical Officer (Numerota Printing) and Deputy Technical Officer (Guillotine/Cutpack) respectively. Prior to amendment of recruitment rules in the year 2002, there were separate recruitment rules for the posts of Deputy Technical Officer (Offset, Intaglio, Numerota and Guillotine). The duties and responsibilities of the post of Deputy Technical Officer are of supervisory nature. Since the recruitment rules for the post of Deputy Technical Officer of each section were separate, it was not possible to deploy any supervisor of a particular section to another section during the absence of any supervisors. However, difficulties were being experienced in deploying the supervisory staff when there is shortage in one particular section and therefore it was being felt that the posts of Deputy Technical Officer were to be clubbed whenever the recruitment rules are reviewed. Vide recommendations of the Vth Central Pay Commission the scale of the Deputy Technical Officer was revised from Rs. 5000-8000/- to Rs. 5500-9000/- with the condition that they should possess at least diploma. The recruitment rules for the posts of Group C in Bank Note press were reviewed. While reviewing it was felt necessary to also club the supervisory posts of Deputy Technical Officer of four sub sections of the printing section so that all the supervisors can be deployed in any of the four sections as per requirement to enable smooth running of the printing machines. Accordingly, all the four posts of Deputy Technical Officer have been clubbed and renamed as Deputy Technical Officer



(Printing) and accordingly the recruitment rules were amended and notified in the official gazettee vide GSR 493 dated 7.12.2002. As per the notified recruitment rules for promotion to the post of Deputy Technical Officer (Printing) Senior Operators (Offset/Intaglio/Numerota/Guillotine Cutpack) with three years regular service and possessing the educational qualifications prescribed for directs i.e. Degree in Printing Technology/Degree in Electronics engineering or diploma in printing technology/diploma in electronics engineering are eligible for consideration. Since the diploma in printing technology/electronics engineering is being insisted for the post, due care was taken in amending the rules to the effect that existing persons do not suffer by way of not having the qualifications. Thus, a clause was put to the effect that possessing the educational qualification in the case of employees already in service in the feeder line in Bank Note Press on the commencement of Ministry of Finance, Department of Economic Affairs (BNP Dewas Group-C posts) (Amendment) Rules, 2002 i.e. 7.12.2002 is not essential. The amended rules also stipulates that the eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in the respective grade/post. After the clubbing of the posts, there are 32 sanctioned posts of Deputy Technical Officer (Printing) in the pay scale of Rs. 5500-9000/- against which 30 persons were in position, in November, 2003 leaving two clear vacancies caused due to retirement. Two more vacancies were anticipated due to retirement of Shri K.L. Thakur and due to anticipation promotion of one Deputy Technical officer as Technical Officer (P&P). Hence four vacancies were available for consideration. As per the amended recruitment rules, the post of Deputy Technical Officer (Printing) is a selection post to be filled



in by promotion failing which by direct recruitment. For promotion Senior Operators (Offset/Intaglio/Numerota/Guillotine-Cutpack) with three years regular service and possessing the education qualifications of degree in printing technology/degree in electronics engineering or diploma in printing technology/diploma in electronics engineering are eligible for consideration. The respondents also submitted that the eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in the respective grade/post. The cases for promotion to the above four posts of Deputy Technical Officer (Printing) were placed before the duly constituted departmental promotion committee held by circulation in November, 2003. The DPC noted that four posts of Deputy Technical Officer (Printing) are to be filled in by promotion by selection by unreserved category. The DPC after going through the CRs of the persons in the zone of consideration recommended the panel for promotion to the post of Deputy Technical Officer (Printing) on regular basis.

No illegality or irregularity has been committed by the respondents while passing the impugned order. Thus, this OA deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that the respondents vide notification at Annexure R-2 amended the recruitment rules for the posts of Group-C in Bank Note Press. According to the amended recruitment rules all the four posts of Deputy Technical Officer i.e. Deputy Technical Officer (Offset Printing), Deputy Technical Officer (Intaglio Printing), Deputy Technical Officer (Numerota Printing) and Deputy Technical Officer (Guillotine/Cutpack) have been clubbed and renamed as Deputy Technical Officer (Printing).



We further find that as per the notified recruitment rules, for promotion to the post of Deputy Technical Officer (Printing), Senior Operators (Offset/Intaglio/Numerota/Guillotine Cutpack) with three years regular service and possessing the education qualifications prescribed for directs i.e. Degree in printing technology/degree in electronics engineering or diploma in printing technology/diploma in electronics engineering are eligible for consideration. Accordingly, the eligibility list for promotion was prepared. Four vacancies were available for consideration. The cases for promotion to the above four posts of Deputy Technical Officer (Printing) were placed before the duly constituted DPC. After going through the ACRs the panel of four persons was recommended for promotion to the post of Deputy Technical Officer (Printing) on regular basis. These four persons are Shri Somnath Namdeo, Shri Amichand, Shri S.B. Choudhary and Shri M.K. Sthapak. The Chairman of the DPC reviewed the recommendations and approved the promotion of the said persons except Shri S.B. Choudhary. Accordingly, the other three persons were promoted to the post of Deputy Technical Officer (Printing) vide order dated 1.2.2004. We further find that the Hon'ble Supreme Court in the case of Mallikarjuna Rao & Ors. etc. etc. Vs. State of A.P. & Ors. etc. etc., 1990(1) Scale 705 held as under :

"11. This Court relying on Narender Chand Hem Raj & Ors. Vs. Lt. Governor, Union Territory, Himachal Pradesh & Ors. (1972(1) SCR 940) and State of Himachal Pradesh Vs. A parent of a student of medical college, Simla and Ors. 1985 (3) SCC 169) held in Asif Hameed & Ors. vs. State of Jammu & Kashmir & Ors. (1989 Supp. (2) SCC 364) as under :

"When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the Legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike-down the action. While doing so the court must remain within its self-imposed limits. The court



sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of Legislature or executive."

12. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India."

Further we have perused another judgment of the Hon'ble Supreme Court in the case of State of Andhra Pradesh & Anr. Vs. V. Sadanandam & Ors. etc. etc., AIR 1989 SC 2060, in which the Hon'ble Supreme Court has observed as under :

"16. We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old rule and for personnel belonging to other zones being transferred on promotion to offices in other zones. In drawing such conclusion, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that 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 judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of executive. As already stated, the question of filling up of posts by persons belonging to other local categories or zones is a matter of administrative necessity and exigency. When the Rules provide for such transfers being effected and when the transfers are not assailed on the ground of arbitrariness or discrimination, the policy of transfer adopted by the Government cannot be struck down by Tribunals or Court of law."

Hence, in view of the aforesaid the Tribunal cannot interfere also in the matter and no illegality or irregularity has been committed by the respondents, while passing the impugned order.



7. Considering all the facts and circumstances of the case, we are of the considered view that the applicants have failed to prove their case and this Original Application is liable to be dismissed as having no merits. Accordingly, the same is dismissed. No costs.

8. The Registry is directed to supply the copy of memo of parties to the concerned parties while issuing the certified copies of this order.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA" पृष्ठंकन सं ओ/ब्या.....जबलपुर, दि.....
प्रतिलिपि अर्पित किया--
(1) सचिव, उच्च न्यायालय, जबलपुर
(2) आवेदक के अधिवक्ता के कार्यालय
(3) प्रत्यक्ष अधिवक्ता के कार्यालय
(4) न्यायालय, जबलपुर, जहाँ यह आदेश सुनाया एवं आवश्यक कार्यवाही की जायेगी

S.D. T. W. S. (per)
S.A. Shomadurkeri (per)

Forwarded
28.11.05

28/11/05 उप रजिस्ट्रार