

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 722 of 2003

Jabalpur, this the 17th day of October, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

1. Vikas Kumar Gupta, S/o Shri P.N. Gupta
Aged 35 Yrs., Sr, Tax Assistant,
Central Excise Indore.
2. K P Raja n, S/o Late K S Parthasarathy
Aged 35 yrs, Sr. Tax Assistant, Central
Excise, Indore

APPLICANTS

(By Advocate - Applicants in person)

VERSUS

1. Union of India, through Secretary
Dept of Revenue, Ministry of Finance
North Block, New Delhi.
2. Chairman, Central Board of Excise
& Customs, North Block, New Delhi.
3. Chief Commissioner of Customs &
Central Excise, Opp Maida Mills,
Hoshangabad Road, Bhopal

RESPONDENTS

O R D E R

By J.K.Kaushik, Judicial Member -

Vikas Kumar Gupta and K.P.Rajan have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 wherein amongst other reliefs they have prayed for quashing of the orders dated 5.6.2002, 8.10.2003 and have also prayed for giving a direction to the respondents to follow the guidelines mentioned in letters dated 19.9.2001 and 3.8.2001 for allocating staff at various level in the zone.

2. An application seeking permission to file a joint application has been filed. Keeping in view that the cause of action and the reliefs claimed are identical in respect of both the applicants, the filing of the joint application is allowed.

3. The case was listed for admission today and both

Contd.....2/-

the applicants were present. The applicant no.1 has argued the matter for admission. We have considered the submissions, pleadings and the records of this case and given our anxious consideration to the same.

4. The brief facts of the case are that both the applicants are holding the post of Senior Tax Assistant in Central Excise, Indore. Applicant no.1 has submitted that the respondents have issued certain orders and changed their policy by relaxing the recruitment rules in various grades for promotion to the higher grade in Group 'C' and Group 'D'. He has invited our attention towards ^{sub-}Paras (i) and (iii) of Para 2 of the said scheme. He has submitted that this scheme is not going to give benefit to the applicants in particular and others in general. He has also submitted that with the implementation of this scheme certain persons who were otherwise not eligible for promotion would get the promotion and even those persons who have not passed the departmental examinations would also get the benefit of promotion. He also endeavoured to bring out certain statistics in relation to various cadres and has submitted that their promotional avenue is going to be completely blocked in future. The further argument of the applicant is that they have made number of representations to the authorities for not resorting to such policies specially the policy of restructuring but there has been absolutely no response in the matter. The applicant was confronted with the specific question as to whether there is any illegality or arbitrariness in the scheme or the policy which has been framed by the respondents. He was at difficulty to answer the query and only submitted that promotion of the Tax Assistant was in particular going to be blocked if the respondents were allowed to implement their policy. No other reason for challenging the policy was pointed out.

5. We have considered the submissions made by the applicants. To appreciate the controversy, we consider it appropriate to extract the main part of the policy which is sought to be challenged and has been so stressed by the applicant no.1 as under :-

"Para (1)(1) of letter dated 8.10.2003(Annexure-A-1)

Relaxation in Recruitment Rules for promotion to the grade of Inspector :

(1) The Central Government has decided to provide for one time relaxation of 2 years in qualifying service to all officials in the pre-restructured cadre, eligible for promotion to the post of Inspector (Central Excise), Inspector (Preventive Officers) and Inspector (Examiner). However, this relaxation is not applicable to the officials claiming eligibility against entry "Stenographer grade-II with 2 years regular service" and "Tax Assistant with 2 years regular service as Tax Assistants" in the pre-restructured cadre. Further wherever the otherwise eligible candidates (including those who have become eligible after the relaxation in qualifying service now granted) have not passed the departmental examination required for such promotion, such officials may be promoted on a purely ad-hoc basis subject to their passing such examination by 31st December, 2003. In case they do not pass the departmental examination by the aforesaid date, they will stand reverted".

6. Before advertng to the crux of the controversy involved, we would like to examine the position of the law in case of judicial review in the matters of policy decisions of the Government. The scope of judicial review in the matter of Government policy is very limited. This proposition of the law has been lucidly explained by the Hon'ble Supreme Court in the case of Federation of Railway Officers Association and others Vs. Union of India, AIR 2003 SC 1344, relevant paragraph 12 of which is reproduced below-

"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which of the purpose for which discretion is to be exercised is clearly expressed in the statute, it can not be said to be unrestricted discretion. On matter affecting policy and requiring technical expertise Court would leave the matter for decision of those who are qualified to address the issue. Unless the policy of action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, this court will not interfere with such matter."

Similarly, in case of State of Punjab and others Vs. Ram

Lubhaya Bagga etc.etc., (1998) 4 SCC 117 the Hon'ble Supreme Court has held -

"So far as the questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on their observation. As already observed by us the weight to be given to the requirement of the service to which requirement is made, the source-material available for recruitment, the composition of the interview Board and several like factors. Ordinarily recruitment to public services is regulated by rules made under the proviso to Art.309 of the Constitution and we would be usurping a function which is not ours, if we try to re-determine the appropriate method of selection and the relative weight to be attached to the various tests. If we do that we would be rewriting the Rules but we guard ourselves against being understood as saying that we would not interfere even in cases of proven or obvious oblique motive. There is none in the present case".

However, it may be pointed out that no scheme governing service matter could be foolproof and some section or the other of employees was bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will, of course, render any scheme unconstitutional. But the fact that the scheme does not satisfy the expectations of every employee was no evidence of these. Similarly, noticing the observation made in Kamal Kanti Datta Vs. Union of India, AIR 1980 SC 2056 it was held that where more than one view was possible and that a choice had to be necessarily condition by several considerations ensuring justice to as many as possible and injustice to as few, it was not safe to test the constitutionality of service rules on the touch stone of fortunes of individuals. Based on the observations made in Mohd.Siauja Ali's case, AIR 1974 SC 1631 it was observed that right of promotion should not be confused with mere chance of promotion. Though the right to be


considered for promotion was a condition of service, mere chances of promotion were not. In the case of Reserve Bank of India Vs. C.N.Sahasranaman and others, AIR 1986 SC 1830 it was held -

"58 whether there has been denial of equality of the view of promotions or any constitutional right infringed or can not be judged, where interest of large number of people concerned, in the abstract. Vast majority, indeed the overwhelming majority of the workmen are in favour of the as evolved by the Bank.....It has to be borne in mind that in service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not top touch stone. See in this connection the observations of this Court in Kamal Kanti Dutta v. Union of India."

7. Now examining the facts of this case on the aforesaid statement of law in the present case certain relaxation has been provided in respect of all the officials in pre-restructured cadre. As regards the passing of the departmental examination, the only relaxation is that one would be promoted on adhoc basis and he would get regular promotion only after passing the departmental examination and in case one does not pass the examination, he shall be reverted. A perusal of the relevant para, reproduced in para 5 above, which is challenged by the applicant reveals that it is going to benefit number of employees and there is no plea of arbitrariness or perversity or malafide from the applicants. Applying the aforesaid statement of law, it is not necessary that the scheme to satisfy the expectation of every employee and it has also been clearly held that consideration for promotion was a condition of service and mere chances of promotion was not. It may be true that the applicants in particular are not immediately getting any advantage of the scheme but the scheme may be benefitting number of other employees. It is not the case of the applicant that noone is going to be benefitted from this scheme. Thus, the contention of the applicants have no substance and, therefore, there is absolutely no ground for intervention from the Tribunal.

8. In view of what has been said and discussed above and the law which has been laid down by the Hon'ble Supreme Court, we are of the firm opinion that the Original Application is devoid of any merit and substance. The same stands rejected in limine.


(Anand Kumar Bhatt)
Administrative Member

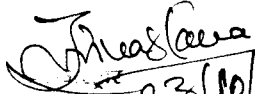

(J.K. Kaushik)
Judicial Member

rkv.

~~प्रति-निवेदन~~

V. R. Gupta, Indore.

Recd.
em
23/10/03


23/10/03