

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 303/2009

DATE OF ORDER: 17th December, 2013

CORAM

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. A. J. ROHEE, JUDICIAL MEMBER**

Avinash Sharma S/o Shri A.R. Sharma, aged 35 years, R/o Q. No. 7, JRRS University Campus, Village Madau, District Jaipur, nowadays Statistical Investigator Grade-I, Directorate of Census Operations (Census Department), Jaipur.

...Applicant

Mr. S.K. Jain, counsel for applicant.

VERSUS

1. Union of India through Secretary, Ministry of Home Affairs, New Delhi.
2. Registrar General of India, Office of the Registrar General of India, 2-A, Mansingh Road, New Delhi.
3. Union Public Service Commission through Secretary to UPSC, Dholpur House, Shahjahan Road, New Delhi.
4. Mukesh Bhargava S/o Shri B.N. Bhargava, aged 51 years, Assistant Director, Directorate of Census Operation, 6-B Jhalana Doongari, Raipur.
5. Claver Toppo S/o Shri Nicolus Toppo, aged 53 years, R/o 120-C Sector-4, MB Road, Pushp Vihar, New Delhi.
6. Mahipal Singh S/o Bhopra Singh, aged 53 years, R/o G-241, Gali No. 12, Sitapuri Part-II PO Palam, New Delhi.
7. Dr. Manoj Jain S/o Shri Mahendra Kumar, aged 35 years, R/o 181-B, DDA LIG Flats, Rajouri Garden, New Delhi.
8. Dr. Pulkesh Sharma S/o Shri Madan Mohan, aged 32 years, R/o A-127, Paryavaran Complex Saidulajab, New Delhi.

...Respondents

Mr. Mukesh Agarwal, counsel for respondent nos. 1 to 3.

Mr. D.P. Sharma, counsel for respondent nos. 5 to 8.

None present for respondent no. 4.

**ORDER
(PER MR. ANIL KUMAR, ADMINISTRATIVE MEMBER)**

The applicant has filed the present Original Application claiming for the following reliefs.: -

"8. (i). by an appropriate order or direction, the impugned provision of promotion in the recruitment rules Ann. A-1 dated 14.10.2001 be declared ultra vires and be set aside.

Anil Kumar

- (ii) By an appropriate order or direction, the impugned order of promotion Ann. A-5 and Ann. A-6 be declared illegal in view of the direction of the Central Government dated 8.2.2002 Ann. A-2 and dated 24.3.2009 Ann. A-8 and the said posts be declared for holding DPC afresh.
- (iii) by an appropriate order or direction, the respondents be directed to amend the rules in consonance with the circular of the Central Government dated 8.2.2002 Ann. A-2 and dated 24.3.2009 Ann. A-8.
- (iv). That by an appropriate order or direction, the respondents be restrained from holding the DPC on the basis of recruitment rule Ann. A-1 till they are amended suitably as per the direction of the Central Government.
- (v) That by an appropriate order or direction, the respondent no. 3 be restrained from holding the DPC for the post of Assistant Director (Technical) in the Census Department till the recruitment rules are amended.
- (vi). Any other relief this Hon'ble Tribunal may deem fit may also be granted."

2. Learned counsel for the applicant submitted that the respondents have subsequently amended the Recruitment Rules in 2012 and, therefore, in the present Original Application, he is limiting his relief to clause 8.(i) of the relief i.e. the provision of promotion in the Recruitment Rules at Annexure A/1 dated 14.10.2001 be declared as ultra vires and be set aside.

3. Brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant had been appointed by Direct Recruitment in the office of Registrar General of India on 24.04.2007 as Statistical Investigator (SI) Grade-I in the pay scale of Rs. 6500-10500. The said post is Grade-B post and is gazetted. The applicant has been duly selected through UPSC.

Amil Kumar

4. He further submitted that the next post for promotion is the post of Assistant Director in the grade of Rs. 8000-13500. The said post is to be filled 70% by promotion, failing which by deputation and 30% by direct recruitment.

5. He also submitted that as per the rules for promotion, the eligibility is from amongst the SI Grade-I with five years regular service in the grade, failing which SI Grade-I with eight years combined regular service in the grade-I and II and the second Investigators (Social Studies) grade-I with 08 years regular service in the grade.

6. Learned counsel for the applicant submitted that from the above condition of eligibility, it is clear that the rules have equated the higher grade and the lower grade for the purpose of promotion, which clearly violates Article 14 and 16 of the Constitution of India. It may be stated that the post of Statistical Investigator Grade-I is the gazetted post while the post of Investigator (Social Studies) Grade-I is a lower post and is non-gazetted post and is in the grade of Rs. 5500-175-9000. As such these Investigators (Social Studies) Grade-I could not be equated to the post of SI Grade-I and these persons cannot be allowed the benefit of promotion to the post of Assistant Director (Technical) at all. It shall amount to double promotion to them without being promoted to the post of SI Grade-I. It thus violates Article 14 and 16 of the Constitution of India and is liable to be declared ultra vires to the Constitution of India. The respondents are considering them for promotion to the post of Assistant Director on the basis of these rules.

Anil Kumar

7. Learned counsel for the applicant further argued that vide letter dated 18.08.2008, the respondents have granted adhoc promotion to 26 persons without amending the recruitment rules and despite the fact that there is no provision in the recruitment rules 2001 for grant of adhoc promotion and that too for one year period. The above fact also shows that the said persons have been promoted not only contrary to the rules but with a malafide intention to give undue benefit to them even when they are very junior persons and are not entitled to be promoted to the post of Assistant Director as they are working in the lower grade of Rs. 5500-9000, which is a non-gazetted post. Thus, as a matter of fact, when more qualified persons are available and they are senior to these persons, their promotion was wholly illegal and honest. The applicant made the representation against the said promotion vide representation dated 02.02.2009 but the said representation has not yet been decided by the authorities. He further pointed out that the incumbents at Sl. No. 3 to 8 of the promotion order dated 18.08.2008 are only Investigator (SS) grade-I. They are in the pay scale of Rs. 5500-9000. Therefore, they could not have been promoted to the post of Assistant Director.

8. Learned counsel for the applicant argued that two unequals cannot be equated on the same footing and since Investigator (Social Studies) Grade-I is a lower post and a non-gazetted post and also in the lower pay scale than the Statistical Investigator Grade-I, therefore, both cannot be equated for the promotion to the post of Assistant Director and this is in violation of Article 14 of the Constitution of India.

Anil Kumar

9. In support of his arguments, learned counsel for the applicant referred to the following case law: -

- (1). **Mir Mahdi Hussain vs. The General Manager, Southern Railway, Madras** (reported in 1975 SLJ 502).
- (2). **Bireswar Chatterjee and Others vs. State of West Bengal and Others** (reported in 1984 LAB. I.C. 979).
- (3). **Secretary, Finance Department and others vs. West Bengal Registration Service Association and Others** (reported in 1993 Supp (1) SCC 153).
- (4). **Onkar Lal Bajaj etc. etc. vs. Union of India & Anr. Etc. etc.** (reported in 2003 (3) SRJ 200).
- (5). **C.C. Padmanabhan and Ors. Vs. Director of Public Instructions and Ors.** (reported in AIR 1981 SC 64).
- (6). **Joaquim I.M. Dias vs. R.S. Revonkar and others** (reported in 1990 (4) SLR 421).
- (7). **The State of Rajasthan vs. Shri Khem Chand Sharma & Another** (reported in 1992 (2) WLC (Raj.) 618).
- (8). **State of Maharashtra vs. Mrs. Kamal Sukumar Durgule and Others** (reported in (1985) 1 SCC 234)."

10. On the contrary, learned counsel for the official respondent nos. 1 to 3 submitted that the eligibility as per Recruitment Rules for promotion of SI Grade-I to the post of ADCO (T) is with 5 years of regular service in the grade, failing which with 8 years combined regular service in the SI Grade-I and SI Grade-II. The other feeder grade for promotion to the post of ADCO (T) is from the Investigator (Social Studies) Grade-I, who are eligible for promotion after completing 8 years of regular service in the grade.

11. He further submitted that the averment made by the learned counsel for the applicant alleging violation of the

Anil Kumar.

provisions of Article 14 and 16 of the Constitution of India alleging that by equating the higher grade and the lower grade for the purpose of promotion is emphatically denied as the recruitment rules are framed in accordance with the requirement of the organization and functional necessities of the post. He argued that the incumbent in Statistical Investigator Grade-I is eligible with 5 years of regular service while that of Investigator (SS) becomes eligible only after completing 8 years of regular service in the grade. The residency periods are specified differently for different grades of SI Grade-I and Investigator (SS), which are as per the Department of Personnel and Training guidelines, hence, there is no element of any illegality. Thus, the Recruitment Rules are perfectly valid and there is no violation of any provisions of Article 14 and/or 16 of the Constitution of India. He further submitted that for the post of Investigator (Social Studies), there is no promotion in the pay scale of Rs. 6500-10500. It is a different stream and, therefore, it cannot be said that two unequals have been equated.

12. With regard to the adhoc promotions given by the respondents on the post of Assistant Director, learned counsel for the respondents submitted that the adhoc promotions made under the combined service clause are in accordance with the provisions of combined services provided in the Recruitment Rules, with the due approval of the Minister-in-charge, who is the competent authority. These adhoc promotions have been made for fulfilling the immediate functional requirements of the department in view of the exigencies of work related to

Anil Kumar.

preparatory work for Census for the year 2011, which is a statutory requirement.

13. To support his averments, learned counsel for the respondents referred to the judgment of **P.U. Joshi and others vs. Accountant General, Ahmedabad and Others**, reported in 2003 SCC (L&S) 191. Para 10 of the judgment is relevant and quoted as under: -

"We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres / categories of service, as may be required from time to time by abolishing the existing cadres / posts and creating new cadres / posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

14. Learned counsel for the private respondent nos. 5 to 8 argued that provisions of recruitment rules do not violate Article

Anil Kumar

14 and 16 of the Constitution of India. He submitted that the Investigators (Social Studies) Grade-I have no further promotion avenue in their cadre and, therefore, they have been provided an opportunity of promotion to the post of Assistant Director along with Statistical Investigator cadre and, therefore, there is no violation of the Constitution of India. The promotion rules categorically provide that Statistical Investigator Grade-I with 5 years' regular service in the grade would be considered first. If there are not sufficient number of Statistical Investigator Grade-I with five years' regular service then only Statistical Investigator Grade-I with eight years' combined regular service in the grades of Statistical Investigator grade-I and Statistical Investigator Grade-II and Investigator (Social Studies) Grade-I with eight years' regular service in the grade would be considered for promotion. Thus, it is clear that for Statistical Investigator Grade-I five years' regular service is required to be eligible for promotion while for Investigator (Social Studies) Grade-I eight years' regular service has been prescribed for being eligible for promotion. Thus, it cannot be said that it is the case of unequals being equated since Statistical Investigator Grade-I are in a higher pay scale, therefore, they have less qualifying service than Investigator (Social Studies) Grade-I who are in lower grade. Therefore, there is no violation of Article 14 and 16 of the Constitution of India. He further submitted that the applicant was appointed to the post of Statistical Investigator Grade-I in the year 2007 and he has already been promoted to the post of Assistant Director (Technical) in the year 2010, therefore, he has no cause to agitate the matter before the

Anil Kumar,

Tribunal. Thus, he argued that the Original Application has no merit and it should be dismissed with costs.

15. Heard the rival submissions of the parties and perused the documents available on record and the case law referred to by the respective parties.

16. We have carefully perused the case law as referred to by the learned counsel for the applicant. The ratio laid down in these cases is basically that treating unequals as equal would be violative of Article 14 of the Constitution of India. However, in the present Original Application, we do not find that the respondents have treated two unequals as equals. It is admitted between the parties that there are two different streams for promotion. One is from the Statistical Investigator Grade-I with five years' regular service in the grade, failing which other from Statistical Investigator Grade-I with eight years' combined regular service in the grade of Statistical Investigator Grade-I and Statistical Investigator Grade-II and Investigator (Social Studies) Grade-I with eight years' regular service in the grade. Thus, we are inclined to agree with the averments made by the learned counsel for the respondents that while the Statistical Investigator Grade-I to be promoted has to have five years' regular service in the grade while the Investigator (Social Studies) Grade-I has to have eight years' regular service in the grade. Moreover, Investigator (Social Studies) Grade-I would be considered eligible only when the Statistical Investigator Grade-I with five years' regular service in the grade are not available for promotion. Had the Investigator (Social Studies) Grade-I were

Anil Kumar

also eligible for promotion with five years' regular service in the grade then it could have been said that the rules are treating unequal as equals. But in this case, the qualifying service for promotion to the post of Assistant Director (Technical) is longer for Investigator (Social Studies) Grade-I (eight years) than Statistical Investigator Grade-I (five years). Therefore, it is not a case where two unequal have been treated as equals. Hence, we are of the opinion that this provision of the Recruitment Rules is not violative of Article 14 or Article 16 of the Constitution of India.

17. Moreover, the ratio decided by the Hon'ble Supreme Court in the case of **P.U. Joshi and others vs. Accountant General, Ahmedabad and Others** (supra), as referred to by the learned counsel for the respondents, is squarely applicable in the present case. The laying of the criteria to be fulfilled for promotions etc. pertains to the field of policy, which is within the exclusive discretion and jurisdiction of the State. It is not for the statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. However, the provisions so made in the Recruitment Rules should not violate the limitations or the restrictions envisaged in the Constitution of India. As we have said earlier, that the provisions as contained in the Assistant Director of Census Operations (Technical) Recruitment Rules 2001 (Annexure A/1) dated 14th October, 2001 are not violative of Article 14 and 16 of the Constitution of India, therefore, on this point, the applicant is not entitled for any relief.

Amil Kumar

18. With regard to the adhoc promotion, we are inclined to agree with the averments made by the learned counsel for the respondents that adhoc promotions have been made in accordance with the provisions of Recruitment Rules for fulfilling the immediate functional requirements of the department in view of the exigencies of work related to preparatory work for Census for the year 2011. Therefore, we do not find any illegality or infirmity in providing the adhoc promotions by the respondent-department. Moreover, the applicant himself is a direct recruitee of 2007 and he has also been promoted to the post of Assistant Director (Technical) in the year 2010 by the official respondents and the department has yet to make regular promotions.

19. Thus, in view of the discussions made above, we are of the opinion that the Original Application has no merit. Consequently, the Original Application is dismissed with no order as to costs.



(A. J. ROHEE)
JUDICIAL MEMBER



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(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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