

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

32

ORDERS OF THE BENCH

13.10.2011

OA No. 523/2009 with MA No. 58/2011

Mr. Anand Sharma, counsel for the applicant.
Mr. Mukesh Agarwal, counsel for respondent nos. 1 to 3.
Mr. S. Shrivastava, counsel for respondent no. 4.
None present for respondent no. 5.

As liberty was given to the respective parties, they have exchanged their written arguments and also placed the same before the Court.

Heard in part. At the request of learned counsels for the parties, put up the matter on 18.10.2011 for remaining arguments. I.R. to continue till the next date.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K. S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

9/8

18/10/2011

OA No. 523/2009 with MA No. 58/2011

Mr. Anand Sharma, counsel for applicants.
Mr. Mukesh Agarwal, counsel for respondent nos. 1 to 3.
Mr. S. Shrivastava, counsel for respondent No. 4.
Mr. Ankit Sethi, proxy counsel for
Mr. S.P. Sharma, counsel for respondent No. 5.

Heard. and M.A.
The O.A. is disposed of by a separate
order on the separate sheets for the reasons recorded
therein.

Anil Kumar

[Anil Kumar]
Member (A)

K. S. Rathore

[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 18th day of October, 2011

OA No. 523/2009

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

1. Krishna Chandra
s/o Shri Ratan Lal Ji Vaish,
r/o 26, Jadon Nagar-B,
Durgapura, Jaipur at present
Posted as Ex-Engineer, GSI,
WR, Jaipur.
2. Rakesh Gupta
s/o Ram Narayan Gupta,
r/o AB-529, Kings Road,
Nirman Nagar, Jaipur,
at present posted as
Ex. Engineer, GSI, WR, Jaipur

... Applicants

(By Advocate : Shri Anand Sharma)

Versus

1. Union of India
through Secretary,
Department of Coal and Mines,
Shastri Bhawan,
New Delhi.
2. The Director General,
Geological Survey of India,
27, Jawahar Lal Nehru Road,
Kotkatta.

3. The Dy. Director General,
GSI, WR, Jaipur
4. Vijay Kumar Nagpal
s/o Shri Bhimsain,
r/o F-8, Shivam Enclave,
47-48, Triveni Nagar Maud,
Jaipur.
5. Praveen Prabhat
s/o late Shri Chadrashwar,
r/o Flat No.301,
Block O, 1424,
Madura Daha,
Mayfair,
Colcata.

... Respondents

(By Advocate : Shri Mukesh Agarwal for resp. No.1 to 3, Shri S.Srivastava for resp. No.4 and Shri Ankit Sethi, proxy counsel for Shri S.P.Sharma for resp. No.5)

ORDER (ORAL)

The applicants preferred this OA against action of the respondents in convening DPC on 20.11.2009 for making promotion on non-existent post of Director (Drilling) by ignoring the merger of Drilling and Mechanical streams of Engineering. It is alleged that this has been done only with a view to extend undue favour to the persons coming from Drilling scheme, who stand junior to the applicants in the seniority list prepared after merger.

2. It is contended that right from inception, the Engineer wing of GSI department has got two separate and independent streams, namely Drilling Engineering and



Mechanical Engineering. Both the streams had their separate seniority lists and separate promotional channels.

3. The Fifth Pay Commission in its report had recommended for merger of aforesaid two engineering streams of Drilling and Mechanical in Geology department. In view of the recommendations of the Fifth Pay Commission decision was taken by the Government to merge these wings into one stream i.e. Engineering and to this effect notification dated 7.7.2009 was issued for the purpose of declaring merger of the disciplines of Drilling Engineering and Mechanical Engineering in to one discipline i.e. Engineering discipline and criteria for determining of seniority after merger has also been given in the notification.

4. Pursuant to the merger vide notification dated 7.7.2009 one provisional seniority list, dated 18.9.2009 was issued by the respondents. In the aforesaid seniority name of applicant No.1 has been shown at S.No.2 whereas name of applicant No.2 has been placed at Sl.No.4. the persons coming from Drilling stream have been shown at lower placed from Sl.No. 6 onwards, hence all the engineers coming from Drilling are junior to the applicant on the post of Executive Engineer (designation renamed after merger).

5. The grievance of the applicants in the instant OA is that after merger there is no separate stream namely Drilling



engineering and Mechanical engineering and therefore, after merger the erstwhile post of Director (Drilling) is also created to exist and it has been redesignated as Executive Engineer (NFJAG) and shall be filled from Executive Engineers as per the seniority list issued after merger of both streams. Yet in quite arbitrary and tyrannical manner on 20.11.2009, the respondents have convened a DPC for filling the non-existent post of Director (Drilling) from the non-existing seniority list of Drilling Engineers (Sr.). It is alleged that the aforesaid DPC has been conducted obviously for giving undue benefits to the engineers who have come from Drilling stream and after merger who have been placed at junior position than the engineers who have come from Mechanical stream. Therefore, by way of this OA, following reliefs have been claimed by the applicants:-

- i) The action of respondents in holding DPC on 20.11.2009 or thereafter for making promotions on the non-existing post of Director (Drilling) by ignoring the merger dated 7.7.2009 may kindly be held illegal and the respondents may kindly be directed to make further promotion in accordance with merged dated 7.7.2009
- ii) The respondents may also be restrained to carry out the recommendations of DPC dated 20.11.2009 for making promotion on the post of Director (Drilling).



- iii) In case, during the pendency of the instant OA any order for carrying out the aforesaid DPC recommendations or any other order prejudicing the right of the applicants is issued, same may be taken on record and may also be quashed.
- iv) The respondents may also be directed to convene DPC in accordance with the merger dated 7.7.2009 for promotion on the post of Executive Engineer (NFJAG) and the candidature of the applicants may also be considered and if they are found suitable they may be directed to be promoted on the post of Executive Engineer (NFJAG).

6. The main challenge to the action of the respondents by the applicants is on the ground that although after merger there is no separate stream like Mechanical Engineering or Drilling Engineering, therefore, the erstwhile post of Director (Drilling) is also ceased to exist and after merger it has been redesignated as Executive Engineer (NFJAG) and shall be filled from Executive Engineers as per the seniority list issued after merger of both streams. Thus, the DPC has been convened without authority of law for filling the non-existent post of Director (Drilling) from non-existing Drilling Engineers (Sr.). It is further alleged by the applicants that the DPC conducted on 20.11.2009 for promotion on the non-existent post of Director (Drilling) is detrimental to the interest of the applicants and



beneficial to the interest of few persons of the department from Drilling stream, who are junior to the applicants in the seniority list issued after merger and none of the persons considered in DPC dated 20.11.2009 from Drilling Stream has completed the required minimum five years of residency as DE (Sr.) and are not even eligible for consideration for promotion on higher post.

7. In support of his submissions, the learned counsel appearing for the applicant placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of Deepak Agarwal and anr. vs. State of U.P. and ors., reported in 2011 (6) SCC 725 wherein the Hon'ble Supreme Court has held that no accrued or vested right of the appellants has been taken away by the amendment dated 17.5.1999 to Rule 5(3) of the U.P. Excise Group 'A' Service Rules, 1983 as the consideration for promotion took place after the amendment came in to operation.

8. Further placed reliance on the judgment rendered by the Apex Court in the case of K.A.Nagmani vs. Indian Airlines and others, reported in (2009) 5 SCC 514, wherein the Hon'ble Apex Court held that:-

"There is no power vested in the respondent Corporation to make any rules since Section 44 of the Air Corporations Act, 1953, confers power to make



rules only on the Central Government and not on the Corporation. The Corporation is entitled to make only regulations which it did and published by way of Notification dated 6-4-1955. The Recruitment and Promotion Rules are not even notified in the gazette as it is not required whereas the Regulations have been gazetted. These Rules are not framed in exercise of any rule-making power. Mere administrative rules are not legislation of any kind. They are in the nature of statements of policy and the practice of government departments, statutory authorities, whether published or otherwise. Statutory rules, which are made under the provisions of any enactment and regulations, subject to parliamentary approval, stand on entirely different footing. The administrative rules are considered to be rules of administrative practice merely, not rules of law and not delegated legislation and they have no statutory force. Mere description of such rules of administrative practice as "rules" does not make them to be statutory rules. Such administrative rules can be modified, amended or consolidated by the authorities without following any particular procedure. There are no legal restrictions to do so as long as they do not offend the provisions of the Constitution or statutes or statutory rules as the case may be.

The agreement/settlement arrived at between the Management and its Officers' Association has the effect of pro tanto amending the Recruitment and Promotion Rules. The Rules and the agreement/settlement are complimentary to each



other and have to be read together. It is not unusual for the Management to consider the representation of its Officers' Association and arrive at a mutually agreed settlement after negotiations as long as such settlement does not run counter to any statutory instrument. Since the Recruitment and Promotion Rules are not statutory in nature but are in the nature of guidelines, there are no impediments to uphold the merger of software and hardware cadres into one cadre."

9. Also referred to the judgment in the case of Haryana State Electricity Board and anr. vs. Gulshan Lal and others, reported in (2009) 12 SCC 231.

10. Per contra, the learned counsel appearing for the official respondents submitted that in the Department of GSI, there are two streams i.e. Drilling Engineering and Mechanical Engineering and both streams are having their separate recruitment rules. As per relevant recruitment rules existed on 1.1.2009, the DPC proposal for 6 posts of Director (Drilling) for the vacancy year 2009-2010 was sent to the Ministry of Mines on 18.3.2009 for convening DPC, prior to merger notification was published in the Govt. Gazette on 14.7.2009. The DPC for both the posts Director (Drilling) and Director (Mechanical) for the vacancy year 2009-2010 was accordingly convened. The applicants who belong to Mechanical Engineering have



challenged the DPC held on 20.11.2009 for promotion on the post of Director (Drilling), however, they have not challenged the DPC for the post of Director (Mechanical), on the ground that after issuing order dated 7.7.2009 published in the Gazette of India dated 14.7.2009, Drilling and Mechanical streams have been merged and post of Director (Drilling) is not existed. Thus, the DPC is not according to law.

11. It is not disputed that this Tribunal vide order dated 27.11.2009 restrained the respondents to give effect to the DPC held on 20.11.2009 and to issue promotion order till the next date of hearing. Thus, due to stay order granted by this Tribunal, promotion was not given on the post of Director (Drilling) whereas on the post of Director (Mechanical) Shri Anupam Gupta have been promoted vide order dated 29.10.2009 (Ann.R/3), in view of the recommendation made by the DPC.

12. Applicant No.1, Shri Krishan Chand filed a representation dated 29.1.2009 in respect of DPC proposal for promotion to the post of Director (Drilling) for the year 2009-2010 and the same was decided by the competent authority vide letter dated 20.11.2009 (Ann.R/1) and applicant was informed that the DPC for consideration for promotion to the post of Director (Drilling) is being held for the year 2009-2010 and the DPC for promotion to the post of Director (Mechanical) for the year



2009-2010 has already been held and approval of promotion has already been given to GSI.

13. After referring letter 20.11.2009, the learned counsel appearing for the respondents submitted that since the applicant has not challenged this letter dated 20.11.2009 (Ann.R/1) in the OA, therefore, the present OA is not maintainable and liable to be dismissed.

14. Further, Drilling and Mechanical Engineering streams are having separate recruitment rules and the same are not amended till date and notification dated 7.7.2009 published in the Gazette dated 14.7.2009 cannot supersede the rules, therefore, the action of the respondents for holding DPC was as per rules existed on 1.1.2009 which is as per law.

15. In support of his submissions the learned counsel appearing for the respondents placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of State of Rajasthan vs. R.Dayal and ors. decided vide judgment dated 17.2.1997 where rules were amended on 24th July, 1995 and it is held that appointment made after selection as per the procedure to the vacancies existed prior to amendment is valid. Thus, all the posts of Director (Drilling) for that DPC was convened belong prior to merger notification published in the Gazette on 14.7.2009 and DPC was rightly convened by the respondents. It is also contended that in the



absence of new recruitment rules, existing recruitment rules of respective stream will be applicable. Further, the Union Public Service Commission as communicated under Min. of Mines letter dated 18.3.2010, whereby it was mentioned that the DPC meeting for the re-designated post of Chief Engineer on account of merger of posts of ODG (Drilling) and DDC (Mechanical) cannot be acted upon without the amendment of the Recruitment Rules which are statutory in nature. Hence the UPSC requested to send separate proposals for the post of ODG (Drilling) and DDC (Mechanical). So far as the provisional merged seniority list published on 18.9.2009 is concerned, it is stated that the same has been deferred and cannot be acted upon till notification of new recruitment rules of merged engineering stream on organized service pattern and separate seniority list for Drilling and Mechanical stream as on 1.1.2010 has been published and promotion in both the streams are taking place separately as per the existing recruitment rules and seniority list.

16. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record as well as the judgments referred to by the respective parties, the main grievance of the applicants is that after notification dated 7.7.2009 both the streams of Drilling and Mechanical are merged and after merger the erstwhile posts



are not in existence. Further, the provisional seniority list after merger has been issued by the respondents and in the provisional seniority list, the applicants are shown senior than the persons working in Drilling stream and, therefore, the DPC which has been convened for filling up posts for the year 2009-2010 on the post of Director (Drilling) is in contravention of the merger notification dated 7.7.2009 by which both the streams have been merged. The applicants also placed reliance on the judgment of Deepak Agarwal (supra) wherein the Hon'ble Supreme Court held that no accrued or vested right of the appellants were taken away by the amendment.

17. We have carefully scanned the judgment rendered by the Hon'ble Supreme Court. Before the Supreme Court two appellants were aggrieved by the impugned order of the High Court upholding the notifications, amendments and orders of the Government which resulted in denying their promotion. One of the appellant was a Statistical Officer and the other was a Technical Officer. Though the earlier rules provided for their promotion to the post of Deputy Excise Commissioner, the Government took a decision to amend the Rules because, considering the work experience, duties and qualification of Statistical Officer and Technical officer, they could not have been considered fit for promotion to the pose of Deputy Excise Commissioner for which only Inspector of Excise Department



were fit. Thus, having considered this fact, the Hon'ble Supreme Court dismissed the appeal and held that no accrued or vested right of two appellants were taken away by the amendment.

18. Here in the instant case, the facts and circumstances are altogether different. The applicants want to take advantage of merger of two different streams vide notification dated 7.7.2009, and as submitted by the learned counsel appearing for the official respondents that the notification of merger was issued on 7.7.2009 and published in the Gazette on 14.7.009. The proposal for convening the DPC for the year 2009-2010 for the post of Director (Drilling) as well as for Director (Mechanical) was sent to the Ministry of Mines on 18.3.2009 and merger of Drilling and Mechanical streams are only prospective and will have effect only after amendment of recruitment rules.

19. It is not disputed that as per recommendations made by the same DPC, appointment on the post of Director (Mechanical) has been made whereas appointment on the post of Director (Drilling) has been challenged by the applicants. Thus, the ratio decided by the Hon'ble Supreme Court in the case of Deepak Agarwal (supra) is not applicable in the facts and circumstances of the present case.



20. Further, we have also carefully gone through the judgment rendered in the case of K.A.Nagmani (supra) wherein the appellant was aggrieved by her non-promotion as Deputy Manager (Maintenance/System). One of the challenges posed by her was that the Recruitment and Promotion Rules framed by the respondents did not provide for merger of cadres of hardware and software in Department of Electronic Data Processing, therefore, the agreement entered into by the respondent Airlines with its officers for merger of two cadres was effective. The issue involved was whether the so-called Recruitment and Promotion rules were statutory rules or were simply administrative orders which had been described as Rules. Further issue was whether the so-called Rules stood modified by agreement entered into by the Airlines with its officers. Applying the ration decided by the Hon'ble Supreme Court in the aforesaid case, it is evident by the submissions made on behalf of the respondents that both the streams Drilling and Mechanical are having separate recruitment rules and same are not amended till date and notification dated 7.7.2009 published in the gazette on 14.7.2009 cannot supersede the rules and placed reliance on the judgment rendered by the Supreme Court in the case of R.Dayal (supra) where the Hon'ble Supreme Court held that



an appointment made after selection as per the procedure to the vacancies prior to amendment is valid.

21. Here in the instant case also the vacancies were for the year 2009-2010. Even otherwise, as discussed herein above, the representation so filed by applicant No.1 Krishan Chand on 29.1.2009 in respect of proposal for DPC for the post of Director (Drilling) has already been decided by the competent authority vide letter dated 20.11.2009, wherein it was indicated that merger of Drilling and Mechanical Engineering is only prospective and will have effect only after amendment of recruitment rules and it is further made clear that seniority of merged cadre is yet to be finalized and until and unless the amendment are made in the recruitment rules. The decision to merger will not serve the purpose and the eligibility criteria for the said DPC was as on 1.1.2009, which is pre-merged scenario and as per rules existing the DPC was convened. The applicants failed to challenge the letter dated 20.11.2009 by which representation filed by applicant No.1 has been decided. Further, the DPC proceedings are being challenged to the extent of promotion on the post of Director (Drilling) whereas appointment on the post of Director (Mechanical) is not challenged. The applicants cannot challenge a part of the proceedings of the DPC. If the DPC is held contrary to law, in that eventuality, the appointments on the post of Director

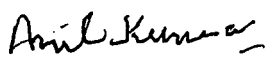


(Mechanical) are also contrary to law, but the appointments on the post of Director (Mechanical) has been made as stated by the learned counsel appearing for the respondents.

22. Thus, in our considered view the ratio decided by the Hon'ble Supreme Court in the case of R.Dayal (supra) is applicable to the facts and circumstances of the case and action of the respondents in convening the DPC as per the existing rules is proper, just and legal which does not require any interference by this Tribunal.

23. Consequently, the OA being bereft of merit fails and the same is hereby dismissed. No costs.

24. The interim direction issued by this Tribunal on 27.11.2009 is vacated, consequently, the MA No.58/2011 for vacation of interim order is also disposed of.


(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/