

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA 2316/2012

Reserved on: 25.04.2016
Pronounced on: 29.04.2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

1. AFHQ Assistants (DR) Association
Through its General Secretary
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... Applicants

(Through Shri M.K. Bhardwaj, Advocate)

Versus

UOI & others through:

1. The JS(T) & CAO
Ministry of Defence
'E' Block, Dalhousie Road,
New Delhi-110011
 2. The Defence Secretary
Ministry of Defence
Govt. of India, South Block,
New Delhi
 3. The Secretary
Ministry of Personnel & Public Grievances,
DoP&T, North Block,
New Delhi

4. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi ... Respondents

(Through Shri Amit Anand, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicants belong to the Armed Forces Headquarters Cadre of Assistants. This OA has been filed regarding curtailment of right of consideration for promotion of the applicants in the grade of Section Officers (SOs) through Limited Departmental Competitive Examination (LDCE). In this regard, they have challenged the notification dated 15.04.2011 namely Armed Forces Headquarters Civil Service (Amendment) Rules, 2011 by which this LDCE quota has been done away with. The other thing challenged by the applicants is clause relating to diversion of direct recruitment quota vacancies of SOs to promotion quota of Assistants. The exact prayer as incorporated in para 8 of the OA is as follows:

(i) Quash and set aside the provisions of recruitment of the Section Officer grade of 50% DR and 50% DP of impugned RR namely Armed Forces Headquarters Civil Service (Amendment) Rules, 2011 being arbitrary and unconstitutional.

- (ii) To direct the respondents to amend the provisions of recruitment in the grade of Section Officer from the existing 50% DR and 50% DP to 20% by DR and 80% by promotion (40% by seniority and 40% LDCE) as incorporated in the earlier Rules of 2001.
 - (iii) To direct the respondents to incorporate the same year diversion clause of unfilled DR quota vacancies of Section Officer to promotion quota for Assistants instead of diversion clause of after 03 years as in the case of Assistant wherein the rule of diversion is "Provided that in case sufficient number of candidates are not available in a year to fill vacancies through direct recruitment, the deficiency shall be made up by promotion.
2. Before the amendment of 2011 came into effect, the Assistants in Armed Forces Headquarters had opportunity of appearing in LDCE and get promotion as SOs. This ensured faster promotion for that cadre. It is stated that the 6th CPC in para 6.1.17 of its report regarding LDCE for posts in Group 'B' and 'C' had recommended that 10% of the vacancies hitherto filled by direct recruitment for all posts in Group B and C (apart from those in pay band PB-1 with grade pay of Rs.1800) will now be filled by LDCE. It was further mentioned in that para that this

will be over and above any existing scheme of LDCE for filling up posts in various grades. It is further pointed out that vide letter dated 8.08.2005, the Ministry of Defence had recommended to Union Public Service Commission (UPSC) to hold LDCE quota which constituted 40% of the total number of vacancies in the grade of SOs for the year 2005 for AFHQ quota which shows that the department was also in favour of LDCE examination. However, in September 2005, the Government of India received the report of the Committee on Cadre Review/ Restructuring of Armed Forces Headquarters Civil Service and Clerical Service in which restructuring of this cadre was suggested. Our attention was drawn to para 1.8 of this report, which reads as follows:

“1.8 The recommendations that have now emerged from the deliberations of the Committee have been made with a view to alleviate the prevailing stagnation by providing adequate promotional avenues in AFHQ Civil Service and Clerical Service in consonance with similarly placed employees of other services and in consistency with the overall administrative and organizational requirements and financial concerns of the Government.”

In para 4.7 of the report, the Committee had recommended as follows:

“4.7 It is recommended that direct recruitment entry should be only at LDC and Section Officer level. The direct recruitment at the level of the Assistants should be dispensed with.”

3. As a result of the restructuring, in paras 4.12 and 4.13, the Committee had made the following recommendations:

“4.12 Since 1968, 75% vacancies of Section Officers were being filled by promotion and 25% by direct

recruitment through Civil Service Examinations. In 2001, the rules were amended and presently 40% vacancies are filled through promotion, 20% through direct recruitment and 40% through Limited Departmental Competitive Examination (LDCE). Since second direct entry is recommended at Section Officers level, it is recommended that the quota of vacancies to be filled through direct recruitment be increased from 20% to 50% to increase the intake of officers at this level and quota of promotion be increased from existing 40% to 50%. The existing 40% quota of LDCE, which was meant to provide accelerated promotion to Direct Recruit Assistants, may be abolished, as there will be no Direct Recruitment at Assistant level. However, the interests of the presently serving Assistants will have to be protected.

4.13 50% posts of Section Officer to be filled up by promotion and 50% by direct recruitment. There will not be any recruitment through LDCE.”

4. Learned counsel also pointed out that in para 5.4, the Committee had recommended as follows:

“5.4 The Committee would like to emphasize that these recommendations should be implemented as a complete package as they have been made in an integrated manner. The cadre structure recommended above, when implemented will give immediate benefit to the members of AFHQ CS. The existing LDCs and UDCs of AFHQ Clerical Service will also be benefitted due to large number of resultant vacancies arising in the higher grades.”

It was highlighted that the above para makes it clear that the Committee had recommended for a complete package to be implemented in an integrated manner and not in a piecemeal manner.

5. In the above background, the learned counsel for the applicants explained that the whole restructuring package and abolishing of LDCE quota was recommended by the Committee

on the assumption that there will be no recruitment at the level of Assistants in future. However, this did not turn out to be true and the recruitment, admittedly, is even now taking place at the level of Assistants and the Recruitment Rules (RRs) also provide for such. Since the Assistants are being recruited, therefore, abolishing the LDCE quota for Assistants was not in line with the recommendations of the Committee. In this regard, the learned counsel referred to notification dated 15.04.2011 and specifically to table in Schedule 4, Item No.6 where it is indicated that 50% of Assistants would be directly recruited on the basis of competitive examination conducted by the Staff Selection Commission (SSC).

6. It is also argued, as mentioned in para 4.14 of the OA, that the LDCE quota has been very beneficial to the Assistants of AFHQ cadre and this gives opportunity to many Assistants to go upto the level of SOs and not face stagnation. Therefore, abolishment of LDCE quota has led to stagnation though the original assumption of the Committee was that this will alleviate stagnation problem in the Assistants cadre.

7. On the question of diversion of direct recruitment vacancies, the learned counsel, first of all, drew our attention to an internal note from the Department of Personnel and Training (DoP&T) dated 7.12.2009 to the Ministry of Defence regarding draft amendments to AFHQ Civil Service Rules where, in clause (c), it is stated as follows:

“(c) It is suggested that DR vacancies of SO not filled in any year may be filled by promotion, as in the case of Assistant.”

It is stated that though it was clearly mentioned in this that direct recruitment vacancies not filled in any year may be filled by promotion under the draft rules sent by the Ministry of Defence to UPSC vide their letter dated 18.01.2010, the period was changed to three years by inserting the following note under the column of Section Officer:

“Note: The unfilled vacancies of the direct recruitment quota as intimated to the UPSC shall be carried forward for three consecutive recruitment years for filling up through direct recruitment. Thereafter, in the fourth recruitment year the unfilled direct recruitment quota vacancies shall be transferred to promotion quota.”

8. According to the learned counsel for the applicants, this was in clear deviation from the recommendations of the DoP&T in its note dated 7.12.2009 and it is alleged that this is a deliberate distortion brought in as Ministry of Defence had no authority to deviate from the recommendations of the DoP&T. Learned counsel also drew our attention to agenda note circulated (Annexure A-12) in which the question of three years carry forward has been raised and answered as follows:

“DOP&T had approved the draft Recruitment Rules for diversion of unfilled DR vacancies of SO Grade to promotion quota in the same year on the line of provisions existing in the Direct Recruitment of Assistant Grade. However, the UPSC have not concurred the proposal and inserted the provision for carry forward of 3 years and thereafter, the lapsing of DR vacancies into promotion quota. The Agenda Point may not be accepted for discussion in the Meeting.”

It is asserted that this also shows that there has been some malafide going on within the Department of Defence in this regard.

9. It is further pointed out that in para 4.18 of the OA, the applicants have made the following assertion regarding the diversion clause:

"The respondent had given comments on the agenda point No.A-13 regarding diversion clause of vacancy in 85th JCM(OC) meeting held on 22 March 2012. They have admitted that DOP&T vide Note dated 07-12-2009 have approved the draft recruitment rules of AFHQ CS with same year diversion clause of unfilled DR quota vacancies of Section Officer grade to the promotion quota as in the case of Assistant wherein the unfilled DR quota vacancies are being diverted to promotion quota in the same year for Upper Division Clerks (UDC). They have acknowledged that they had forwarded the draft recruitment rules of AFHQ CS to UPSC with same year diversion clause of unfilled DR quota vacancies of Section Officer grade to promotion quota as approved by DOP&T. However, UPSC have not given the concurrence to the proposal and inserted the clause of diversion of unfilled DR quota vacancies of Section Officer to promotion quota after 03 years. However, information received from the respondent through RTI states that respondent had not included the same year diversion clause of unfilled DR quota vacancies of Section Officer grade to promotion quota as approved by DOP&T and sent the proposal to UPSC with diversion clause after 03 years. The respondent have given false information in the 85th JCM(OC) meeting. This proves the malafide intention of the respondents that they want to block the promotional avenues of Assistant. When DOP&T approved the same year diversion clause then why the respondent sent the proposal with diversion clause of after 03 years to UPSC. Why the respondents misled the employees in the 85th JCM(OC) meeting? Did the deed of the respondents is not self explanatory that they wanted to reduce the promotional avenues of Assistant?

10. It is stated by the applicants that in their reply to this para, the respondents have not explained this clearly and stated only as follows:

"Para 4.18 : That the para is wrong and denied. DOP&T had approved the draft AFHQ CS Service Rules for diversion of unfilled DR quota vacancies of SO grade to promotion quota in the same year on the line of provisions existing in the DR of Assistant grade in AFHQ CS. However, the diversion of unfilled DR quota vacancies in the grade of Section Officer in AFHQ CS was considered by UPSC while approving the draft Service Rules vide their letter No.F.No.3/4(2)/2010-RR dated 15th Feb 2011 whereby the diversion of unfilled DR quota vacancies in the grade of Section Officer in AFHQ CS in the fourth recruitment year was approved by them. Thereafter, the draft AFHQ CS Rules were vetted by Ministry of Law vide note No.76, Dy.No. 420/11 dated 15.3.2011 and subsequently notified in the Gazette on 23 Apr 2011 vide SRO No. 27 dated 15 Apr 2011."

Learned counsel for the applicants, therefore, alleges malice in law.

11. Learned counsel for the applicants also drew our attention to para 6 of the additional affidavit filed by the respondents dated 29.04.2013 in which the respondents have made the following averments:

"Later on, on calculation of future LDCE quota vacancies in Section Officer grade (in case LDCE mode continues), it was observed that 324 (including 44 vacancies for LDCE 2005) more LDCE Section Officers would add to the figure of 115 in the ensuing years and the resultant factor would be that number of LDCE Section Officers would increase to 62% of total authorised strength of 778 Section Officers which would create promotional bottlenecks for promotions in subsequent grades and stagnation within LDCE Section Officers which is not in the interest of smooth cadre management and future maintenance of the cadre."

It is stated that this is an incorrect statement as the calculation of future LDCE quota has to be based on vacancies and not on posts and, therefore, to say that the LDCE SOs would increase to 62% of the total authorized strength of 778 SOs which would create promotional bottlenecks for promotions in subsequent grades is a blatantly wrong statement.

12. At this point, the learned counsel for the respondents tried to clarify that SOs are recruited by the UPSC through the Civil Services Examination every year. However, to complete the whole cycle from advertisement to final recruitment, it takes three years whereas in case of the Assistants, the recruitment takes place through the DSSSB for which the whole process takes about one year. It is for this reason that there is a three year clause in case of SOs as against one year clause for Assistants. This was rebutted by the learned counsel for the applicants stating that in case of recruitment the time period for completing the cycle is not relevant and what is relevant is the recruitment year, therefore, in all fairness, the diversion should be for the same recruitment year and the respondents have, as has been mentioned by him earlier, acted in contradiction of DoP&T advice in increasing the period from one year to three years.

13. Learned counsel for the respondents stated that in order to complete restructuring of AFHQ Civil Services, the government set up a Committee, which gave its recommendations in

September 2005. Thereafter, there was a series of consultations between the Ministry of Defence, DoP&T, UPSC as well as thorough examination of the recommendations internally by all the departments and finally the respondents have come up with the revised RRs of 2011. The respondents have taken pains to file additional documents to establish this chain of events as to how this recommendation of the Committee was examined at different levels followed by detailed discussions between the various departments/ UPSC and then only the revised policy in the shape of RRs 2011 was notified. Every required procedure was followed with proper application of mind at all levels. Therefore, no malafide or arbitrariness or non-application of mind can be alleged in this matter. In this regard, the learned counsel relied on the judgment of the Hon'ble Supreme Court in **Ekta Shakti Foundation Vs. Govt. of NCT of Delhi**, AIR 2006 SC 2609, where the Hon'ble Court held as follows:

"10. While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Ashif Hamid v. State of J. & K. (AIR 1989 SC 1899), Shri Sitaram Sugar Co. v. Union of India (AIR 1990 SC 1277). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

11. The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

12. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

13. The Court should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theatre Company v. City of Chicago* (1912) 57 L Ed 730. The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. [See: *State of Orissa and others v. Gopinath Dash and Others* (2005) 13 SCC 495]."

He also relied on the judgment of the Hon'ble Supreme Court in **Director, Lift Irrigation Corporation Ltd. and others Vs. Pravat Kiran Mohanty and others**, (1991) 2 SCC 295, in which the Hon'ble Supreme Court held as follows:

"The government or the corporation, due to administrative exigencies, is entitled to and has power to reorganize the existing cadres or amalgamate some or carve out separate cadres. The decision to amalgamate the existing cadres by reorganizing into two cadres was a policy decision taken on administrative exigencies. The policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle."

He argued that in view of the fact that the department has followed all the procedure while revising the policy and come out with the revised RRs of 2011, keeping in view the law settled by the Hon'ble Supreme Court as pointed out, the Tribunal may not like to interfere in the policy decision and the OA may be dismissed.

14. Per contra, the applicants main argument is that arbitrariness, unreasonableness towards directly recruited Assistants is writ large and the same is proved. He relies on the following judgments to establish that executive action is always subject to judicial review and Courts can interfere in administrative decision if it is unjust and prejudicial to a section of employees:

- (i) **K. Rajendran and others Vs. State of Tamil Nadu and others**, (1982) 2 SCC 273
- (ii) **Dwarka Prasad and others Vs. Union of India and others**, (2003) 6 SCC 535
- (iii) **A. Satyanarayana and others Vs. S. Purushotham and others**, Civil Appeal No. 2963/2008
- (iv) **Union of India and another Vs. S. Thakur**, 2008 (13) SCALE 277
- (v) **Asha Sharma Vs. Chandigarh Administration and others**, (2011) 10 SCC 86

15. It is argued that putting certain categories in disadvantageous position violates Articles 14 and 16 of the

Constitution and liable to be quashed. In fact, specifically the decision of the Tribunal in OA 1309/2009 with OA 1310/2009,

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has been cited where this Tribunal has set aside the RRs holding it to be illegal and arbitrary.

16. We have heard the learned counsel for the parties and gone through the pleadings available on record as well as judgments cited by either side.

17. The main grounds on which the applicants claim that there has been arbitrariness or unreasonable attitude of the respondents towards Assistants are the following:

- (i) That a biased officer has given certain misleading notings on file so that Assistants are put at a disadvantageous position as the biased officer belongs to SO grade;
- (ii) The recommendations of the Committee of 2005 were to be implemented in its totality and not piecemeal manner and the recommendations of the Committee to abolish LDCE quota was only on the assumption that there will be no recruitment of Assistants in future. However, recruitment of Assistants continued and, therefore, the LDCE channel should have been continued; and
- (iii) That since the RRs of 2011 now put the Assistants at a disadvantageous position, therefore, it

violates Articles 14 and 16 of the Constitution of India.

18. We have gone through in detailed procedure adopted by the respondents in amending the RRs in 2011. First of all, there has been consideration of the recommendations of the Committee of 2005 in extenso in the Ministry of Defence, DoP&T as well as UPSC and in order to understand and sort out the various issues, meetings have been held at senior levels. To allege that all these senior officers have been misled by the so-called misleading noting by an SO is preposterous and a complete lack of understanding of how government functions. We reject this argument outright. The government in its wisdom, after thorough examination and consideration, has taken a policy decision in the shape of RRs of 2011 after considering the report of the Committee, which was to improve the overall cadre management of the AFHQ.

19. We have not been able to detect any arbitrariness or malafide on the part of the respondents. It was a thorough job following due procedure and it is not that all channels of promotion to SO have been blocked. Even now, 50% of the quota of SO as per the RRs of 2011 will be filled up by promotion. It has to be understood by the applicants that the respondents have to cater to the interests of several cadres in the organization and they have to take a balanced approach optimizing efficiency of the organization as well. As mentioned earlier, the Hon'ble Supreme Court has settled the law in this

regard, which in simple terms, is that the Tribunal shall not interfere in policy matters unless it detects arbitrariness or discrimination or non-application of mind by the executive. Policy matters are in the domain of the executive. As already stated, we are convinced that there has been no arbitrariness or discrimination or non-application of mind on the part of respondents.

20. We, therefore, have no hesitation in concluding that the RRs of 2011 do not suffer from violation of Articles 14 and 16. The OA, therefore, does not succeed and is dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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