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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

CALCUTTA

In the matter of MA No.351/ 00./66/2018 arising out of RA No-
351/001/2015 of OA No 351/147/AN/2012

And

In the matter of Shahaja & Others.

.....Applicants

Vs.

Union of the India and others

.....Respondents

And

In the matter of

1. Smt Shahaja
Working as Junior Engineer
Electricity Department
Presently posted in the office of the Executive
Engineer, South Andaman, Port Blair
Pin-744101
2. Smti. Neetu
Working as Junior Engineer
Electricity Department
Presently posted at Circle Office,
Electricity Department, Port Blair
Pin-744101
3. Shri Rahul Rai
Junior Engineer
Electricity Department
Presently posted at Kamorta
Nicobar District
Pin-744101
4. Smt Shiva
Junior Engineer
Electricity Department

Presently posted at NRSE Division
Port Blair Tehsil, South Andaman
Pin-744105

5. Shri K Rajan
Junior Engineer
Electricity Department
Presently posted at PG Division
Port Blair Tehsil, South Andaman
Pin-744102
6. Smt Hameeda Begum
Junior Engineer
Electricity Department
Presently posted at Panchayat Samity, Ferrargunj
Pin-744105
Ferrargunj Tehsil, South Andaman
7. Shri Dipak Kumar Singh
Junior Engineer
Electricity Department
Presently posted at Hut Bay
South Andaman District
Pin-744105
8. Smt Nameeta Kumari
Junior Engineer
Electricity Department
Presently posted at Ferrargunj
South Andaman District
Pin-744105
9. Smt T Dhana Laxmi
Junior Engineer
Electricity Department
Presently posted at Rangat Bay Power House (Rural
Division)
North and Mid
dle Andaman District
Pin-744105
10. Smt R Maheshwari
Junior Engineer
Electricity Department
Presently posted at Aerial Bay (North Division)
North and Middle Andaman District
Pin-744201

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11. Shri Mohd Rafi
Junior Engineer

Electricity Department

Presently posted at Nimbudera (Rural Division)

North and Middle Andaman District

Pin-744105
 12. Smt Shaheen
Junior Engineer

Electricity Department

Presently posted at Chakkargaon (Headquarter
Division)

Port Blair Tehsil, South Andaman District

Pin-744103
 13. Smt Sheeba John
Junior Engineer

Electricity Department

Presently posted at Kalpong Hydro Electric Project
(North Andaman Division)

North and Middle Andaman District

Pin-744205
 14. Ms M Panchavarnam
Junior Engineer

Electricity Department

Presently posted at Kalighat (North Andaman
Division)

North and Middle Andaman District

Pin-744105
 15. Ms Pinki Devi
Junior Engineer

Electricity Department

Presently posted at NRSE Division

Port Blair Tehsil, South Andaman

Pin-744105
 16. Shri R Ramachandran
Junior Engineer

Electricity Department

Presently posted at Nicobar Division

Nicobar District

Pin-744103
 17. Shri Sanjay Kumar
Junior Engineer

Electricity Department
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Presently posted at Ograbraj (South Andaman Division)

Pin-744105

18. Ms Swati Kumari
Junior Engineer

Electricity Department

Presently posted at Rangat Bay Power House (Rural Division)

North and Middle Andaman District

Pin-744105

19. Smt S Chandran Devi (PH)
Junior Engineer

Electricity Department

Presently posted at Rangat Bay Power House (Rural Division)

North and Middle Andaman District

Pin-744201

.....Applicants

-VERSUS-

1. The Union of India,
Through the Secretary

Ministry of Home Affairs, Govt. of India,

North Block, New Delhi-110 001

2. The Union of India
Through the Secretary

Ministry of Power, Govt. of India

Rafi Marg, Shram Shakti Bhawan

New Delhi - 110010

3. The Lt. Governor (Administrator),
Andaman and Nicobar Islands,

Raj Niwas, Port Blair.

PIN -744101

4. The Chief Secretary,
Andaman and Nicobar Administration,

Secretariat, Port Blair.

PIN -744101

5. The Secretary (Power),
Andaman and Nicobar Administration,

Secretariat, Port Blair.

PIN -744101

6. The Deputy Secretary (Power)
Electricity Department

Andaman and Nicobar Administration

Port Blair

PIN -744101

7. The Superintending Engineer
Electricity Department

Andaman & Nicobar Administration

Port Blair.

PIN -744101

8. The Assistant Director(Admn)

Vidyut Bhawan

Port Blair.

PIN -744101

.....Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Dated: 06.03.2018.

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. SK Ghosh, Counsel

ORDER

Per Ms. Bidisha Banerjee, Judicial Member:

The review of the order dated 27.07.2015 has been sought for on the ground that this Tribunal had erroneously taken into consideration the para 5 of the Recruitment Rules on powers to relax whereby the following has been provided:

"5. Powers to relax:

Where the Lt. Governor (Administrator) Andaman and Nicobar Islands is of the opinion that it is necessary or expedient so to do, he may, by order for reasons to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the provisions of these rules in respect to any class or category of persons."

and ordered the respondents to issue fresh notification since the respondents had relaxed the condition of Recruitment Rules in favour of the private respondent in the OA contravening para 5 supra and declared that the appointment made on 12.09.2012 was a nullity in the eye of law and illegal; and that in terms of the said Recruitment Rules and Clause 14 of schedule thereof it was very clear that while making recruitment, consultation with UPSC was not required. The said Clause is being reproduced verbatim herein below for clarity:

14.	Circumstances in which the UPSC is to be consulted in making recruitment.	Not applicable.
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It was therefore argued that in order to relax any condition of the Recruitment Rules, consultation with UPSC was not mandatory since recruitment to the post of Junior Engineer could be made by the Lt. Governor himself.

2. MA has been preferred to seek an order restraining the respondents to initiate any fresh selection in compliance of the order passed in OA.

3. Ld. Counsel for applicant would hand over the various copies of internal notes wherefrom it appeared that Deputy Secretary of Law has given his opinion that for granting relaxation of provision of Recruitment Rules in case of upto Group 'B' Non-Gazetted consultation of UPSC is not necessary.

It was further noticed that on 22.08.2018 the DS(Power) requested the SE, Electricity to rectify/make necessary correction in clause 5 of the notification to the post of JE. However, nothing has placed on record to show that para 5 (supra) of the Recruitment Rules have been amended in any manner whatsoever.

4. Ld. Counsel for respondents vehemently opposed the review on the ground that pursuant to the direction of this Tribunal and in compliance thereof the posts have already been advertised on 05.02.2018 and the RA petitioners have been permitted to undertake the selection and that necessary age relaxation would be obtained from the competent authority.

Ld. Counsel would further submit that this Tribunal had never granted any stay. Therefore, was too late a day to stall the proceedings since at no point of time earlier the initiation of the fresh selection process was stalled by this Tribunal.

5. The Id. Counsels for both the sides were heard and the materials on record were perused.

6. We noted that the applicant's counsel urged on the limited issue on para 5(supra) which provides for consultation of UPSC in case the LG is of the opinion it is necessary or expedient so to do, he may, by order for reasons to be recorded in writing and in consultation with UPSC, relax any of the provisions of these rules in respect to any class or category of persons.

We already noted in the OA order that the right to relax was hedged by a condition and therefore not absolute. No scrap of paper has been produced to show that para 5 as extracted (supra) has been done away with or LG has been authorized or empowered to relax the provision of the Recruitment Rules in respect of any clause or category of persons. The Recruitment Rules being statutory in nature could not be amended by any administrative instructions.

We further noticed that relaxation has been sought for on both ground, age as well as qualification and clause 14 schedule I unambiguously spell out that for the purpose of making recruitment consultation with UPSC was not required, the scope whereof has not been extended widely to include the power to relax the provisions of the recruitment rules for a class/category of persons.

7. Our attention has also been drawn to the notification of Ministry of Home Affairs, dated 01.09.1958 where it is stipulated that "it shall not be necessary to consult the Commission in regard to any of the matters mentioned in sub-clause (a) and (b) of clause (3) of the Article 320 of the Constitution in case of the services and posts specified in the Schedule I to these Regulations.

"In case of services and posts being Group-'B' Non-gazetted under A&N Islands & Lakshadeep Administration"

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Hon'ble Apex Court in a case [1993, Suppl. 3, 575] reiterated that appointment to a post in accordance with the rules is a pre-condition and that the condition of the rules of recruitment cannot be relaxed. Hon'ble Court held:

"Rule 3 of the Residuary Rules, though empowers the Government to relax the rules, it cannot be availed nor have power to relax conditions of recruitment".

In a case where adhoc appointee (Doctors) have been continuing for a long time but their adhoc appointment was dehors of rules, since the rules prescribed for direct recruitment, the Hon'ble Apex Court deprecated issuance of direction in negation of Article 14 & 16 and in violation of the statutory rules and devising the "3rd mode" of selection to dis-obey the Constitution under the law.

In **Union of India vs. Dr. Gyan Prakash Singh** in 3 judges of Apex Court considered the effect of the order in **A.K. Jais case 1987 Supp SCC 497** and held that the doctors appointed on ad hoc basis and taken charge after October 1, 1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment.

In **State of Haryana v. Piara Singh, (1992) 4 SCC 188**, Hon'ble Apex Court held that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, Hon'ble Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by

another ad hoc or temporary employee. He must be replaced only by regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or ad hoc employee continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

In *Keshav Chandra Joshi v. Union of India*, 1992 Supp (1) SCC 272 one of the contentions raised was that Rules 27 of the U.P. Forest Service Rules, 1952, empowers the Government to relax any conditions of service to remove undue hardship and the appointments of the ad hoc promotion is in accordance with Rule 27. Considering the contention it was held that: (SCC p. 288, para 33)

"There is a distinction between 'rules of recruitment' and 'conditions of service'. To become a member of the service in a substantive capacity; appointment by the Governor shall be preceded by selection of a direct recruit by the Public Service Commission, undergoing training in Forestry for two years in the college and passing Diploma are conditions precedent. If the contention of the promotes that rules of recruitment are conditions of service is accepted, it would be open to the Governor to say that 'I like the face of "A" and I am satisfied that he is fit to be appointed; I dispense with the rules of recruitment and probation and appoint "A" straightaway to the service in a substantive capacity as Assistant Conservator of Forest."

"Therefore, it was held that rule of relaxation cannot be exercised in matters of recruitment. It would be only to remove undue hardship that the power to relax the conditions of service should be exercised and rules relating to recruitment of the service should not be relaxed.

We further noticed that it is a settled law that once statutory rules been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but only supplement the law".

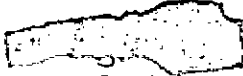
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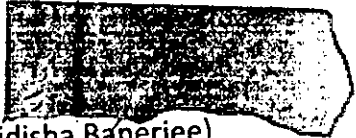
8. Since the Recruitment Rules are framed under Rule 309 of the Constitution of India, it was held that:

"A little leeway to make ad hoc appointment due to emergent exigencies, does not clothe the executive Government with power to relax the recruitment or to regularise such appointment nor to claim such appointments to be regular or in accordance with rules. Back door ad hoc appointments at the behest of power source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair play. The later are the product of order and regularity. Every eligible person need not necessarily be fit to be appointed to a post or office under the State, selection according to rules by a properly constituted commission and fitment for appointment assures fairness in selection and inhibits arbitrariness in appointments. In view of the Explanation (b) to Rule 4, the ad hoc appointments to any post in any of the three wings of the service under the Rules are therefore de hors the Rules".

9. In view of the legal position set out supra when the statutory rules explicitly provide the manner in which power to relax is to be exercised, the Administration is not empowered to relax the condition in any other manner whatsoever. In view of above, we find no reason to allow the review application to permit the petitioners in review application to continue on regular/temporary basis having already noted fact that the condition of recruitment rules were relaxed de hors the recruitment rules particularly para 5 thereof, (as extracted supra). The condition of existence of "error apparent on the face of record" being not satisfied. The Review Application is dismissed.

10. In view of the dismissal of the Review Application, the M.A. seeking stay of the recruitment notice issued by the respondents pursuant to the direction of this Tribunal is also stands dismissed.


(Jaya Das Gupta)
Member (A)
pd


(Bidisha Banerjee)
Member (J)