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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1876/2003

New Delhi, this the 6th day of July, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

A. Vishwakarma
Senior Marketing Officer, (Group 'A')
r/o House No.1789, Sector 28
Faridabad (Haryana). ... Applicant

(By Advocate: Sh. Rajinder Nischal)

Versus

Union of India
through its Secretary
Ministry of Agriculture
Department of Agriculture and Co-operation
Krishi Bhawan
New Delhi. ... Respondent

(By Advocate: Smt. Harvinder Oberoi)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Sh. A. Vishwakarma) has filed the present application seeking a direction to the respondents to consider him for the post of Deputy Agricultural Marketing Adviser (for short 'Dy. AMA') by holding a Departmental Promotion Committee Meeting.

2. The relevant facts are that applicant, who joined service as Senior Inspector on 1.9.1972, was promoted as Assistant Marketing Officer on 21.12.1979. He was regularised as Senior Marketing Officer on 3.2.1997. According to the applicant, the next higher post on promotion is Deputy Agricultural Marketing Adviser. The applicant has completed ten years combined service as Marketing Officer and Senior Marketing Officer and is eligible for promotion. As



vacancies are available there, directions should be issued to consider the applicant for the post of Deputy Agricultural Marketing Adviser.

3. The application has been contested. The respondents contend that prior to Fifth Central Pay Commission's recommendations, the Directorate of Marketing and Inspection had the posts which were governed by the Directorate of Marketing and Inspection. The same are:

"Name of the post	No. of posts	Scale of pay	Method of recruitment
Agriculture Marketing Adviser (AMA)	1	5900-6700	Transfer and deputation.
Joint AMA	3	4100-5300	Promotion of Dy. A.M.A.
Dy. A.M.A.	28	3000-5000	Promotion of Sr. Marketing Officer.
SMO	86	2200-4000	Promotion & direct recruitment."

4. That there were certain demands relating to Group 'A' posts that were made to the Pay Commission citing stagnation in the higher positions as a major deterrent to job satisfaction. Suggestions were made for creation of an intermediate post of Additional Agricultural Marketing Adviser between the Agricultural Marketing Advisers and the Joint Agricultural Marketing Advisers. For opening the promotional avenues of Deputy Directors (Laboratories), creation of level of Joint Director (Laboratories) was also demanded. The Fifth Central Pay Commission recommended that one post of Joint Agricultural Marketing Adviser may be upgraded to the

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scale of Rs.5100-6150 and re-designated as Additional Agricultural Marketing Adviser and filled by promotion of Joint Agricultural Marketing Advisers. The remaining Joint Agricultural Marketing Advisers would be placed in the scale of Rs.4500-5700. The post of Deputy Agricultural Marketing Adviser was to be placed in the scale of Rs.3700-5000. Consequent upon the recommendations of the Fifth Central Pay Commission and acceptance of the same by the Government, the Directorate of Marketing and Inspection (Field Cadre Posts) has since been restructured as under:

"Agriculture Marketing Adviser	5900-6700
Additional AMA	5100-6150
Joint AMA	4500-5700
Deputy AMA	3700-5000
Asstt. AMA	3000-4500
Sr. M.O.	2200-4000"

5. The pay scales in this regard were notified. The Department of Personnel and Training issued detailed instructions in view of the Fifth Central Pay Commission's recommendations. In this backdrop, it is contended that the applicant can only be considered firstly for the intermediary posts and cannot, therefore, be appointed straightaway as Deputy Agricultural Marketing Adviser.

6. We have heard the parties' counsel.

7. During the course of arguments, little dispute could be raised pertaining to the creation of another post as Assistant Agricultural Marketing Adviser. This has been so done w.e.f. 30.3.2001 admittedly the applicant is holding the said post on



ad hoc basis. The grievance of the applicant is that he should be straightaway considered for promotion as Deputy Agricultural Marketing Adviser.

8. We have no hesitation in rejecting the said contention primarily on the ground that he has already enjoyed the benefit of the intermediary post that has been created between Senior Marketing Adviser and Deputy Agricultural Marketing Adviser. There is thus little equity for him to contend that he should be considered and promoted straightaway as Deputy Agricultural Marketing Adviser.

9. The main submission in this regard, however, was that the applicant was eligible for consideration to the post of Deputy Agricultural Marketing Adviser, even before the intermediary post had been created and thus, according to the learned counsel when till date the Recruitment Rules have not been amended, the applicant has a right to be considered for the post as per the then Recruitment Rules.

10 The position in law is not much in controversy. In the case of **A.A.Calton v. Director of Education and Another**, (1983) 3 SCC 33, the process of selection had commenced. Certain candidates were recommended by the selection committee but were rejected by the Deputy Director. The question that arose for consideration was as to what was the effect of the amendment, whether it would be retrospective or not and if the existing rights can be taken away by giving retrospective effect to a statutory provision



when not provided expressly or by necessary implication. The Supreme Court held that though the legislature can pass laws with retrospective effect, the existing rights could not be taken away. It was held:-

"It is true that the legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect."

The case of Y.V. Rangaiah and Others v. J. Sreenivasa Rao and Others, (1983) 3 SCC 284 is a leading decision on the subject with which we are confronted with. Therein, a panel for promotion was to be prepared. Delay was there in preparing the same. An amendment in the recruitment rules was made. As a result of it, promotional chances of eligible Lower Division Clerks were affected. The Supreme Court held that the vacancies in the promotional posts occurring prior to the amendment should be filled up in accordance with the unamended rules. The findings of the Supreme Court in this regard are:-

"9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that



henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there is was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

It is this decision that is being relied upon by the learned counsel for the applicant in support of his argument which we have already referred to above. Same was the decision rendered by the Supreme Court in the case of P. Mahendran and Others v. State of Karnataka and Others, (1990) 1 SCC 411 and while dealing with a similar situation, the Supreme Court held:-

"5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is any thing therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be



made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter."

Similar view was taken by the Supreme Court in the case of **P. Murugesan and Others v. State of Tamil Nadu and Others**, (1993) 2 SCC 340. Therein, the question was about filling up the vacancies within the time prescribed. Rules prescribed eligibility criteria for promotion. The same were amended. The Supreme Court held that the vacancies arising within the prescribed period prior to commencement of the amendment should be filled in accordance with the pre-amended Rules. The decision in the case of **Y.V. Rangaiah (supra)** was referred to with approval. It becomes unnecessary for us to deal with further enumerable precedents on the subject, but suffice to state that in the case of **State of Rajasthan v. R. Dayal and Others**, (1997) 10 SCC 419, the Supreme Court once again reiterated the same view holding:-

"But the question is whether selection would be made, in the case of appointment to the vacancies which admittedly arose after the amendment of the Rules came into force, according to the amended rules or in terms of Rule 9 read with Rules 23 and 24-A, as mentioned hereinbefore. This Court has considered the similar question in para 9 of the judgment above-cited. This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in accordance with the law existing as on the date when the vacancies arose."

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11. However, on behalf of the respondents, reliance was being placed on a decision of the Apex Court in the case of **Dr.K.Ramulu and Another v. Dr.S.Suryaprakash Rao and Others**, (1997) 3 SCC 59. Therein a conscious decision had been taken not to fill up the vacancies as per the amended rules. Keeping in view the same, the decision rendered by the Supreme Court in the case of Y.V.Rangaiah (supra) was distinguished and it was held that when such was the situation, the amended rules that came into being subsequently would come into play.

12. From the aforesaid, it is clear that it goes with the facts and circumstances of each case. If certain vacancies fall in a particular period and subsequently the rules are amended to the detriment of some of the eligible candidates, the said persons certainly can claim that they should be considered as per the unamended rules, but if a conscious decision is taken not to fill up the posts for certain reasons, in that event the abovesaid principle will not apply.

13. It has to be seen that there is a conscious decision that had been taken not to fill up the post as per the then prevalent posts. Such a decision can be taken expressly or can be inferred. Our attention is being drawn towards the order issued by the Ministry of Agriculture dated 30.3.2001. It reads:

"ORDER

In pursuance of the recommendations of the Fifth Central Pay Commission vide Para 84.10, as accepted by the Government vide Part C of First Schedule of Ministry of Finance




(Department of Expenditure) Notification NO.F.50(I)/IC/97 dated 30.9.1997 and with the approval of the Ministry of Finance (Department of Expenditure), Implementation Cell vide their U.O. No.56/1/2000-IC dated 11th January, 2001, approval of the Competent Authority is hereby accorded to up-gradation of 30 posts of Senior Marketing Officers (25 Gp.I & 5 Gp.III) (G.C.S. Group A Gazetted) from the existing pay scale of Rs.8000-13,500/- to Rs.10,000-15,200/- and re-designation of these posts as Assistant Agricultural Marketing Advisers in the Directorate of Marketing and Inspection, Department of Agriculture and Cooperation with immediate effect.

This issues with the concurrence of Integrated Finance Division vide their Dy. No.4500/FA dated 22.1.2001.

sd/-
(S.C.MISHRA)
Under Secretary to the
Govt. of India"

This order clearly shows that 30 posts of Senior Marketing Officers were upgraded and re-designated as Assistant Agricultural Marketing Advisers. This is a clear decision taken that firstly the intermediary post as referred to above would be filled up because 30 new posts have been upgraded as Assistant Agricultural Marketing Advisers with higher scales. Necessarily, the applicant must hold that post, in the first instance, and thereafter his claim could be considered for the next higher post of Deputy Agricultural Marketing Adviser. In this process the decision in the case of Y.V.Rangaiah and Others referred to above will have no application.

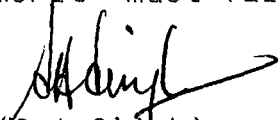
14. As already referred to above, the applicant has already holding the intermediary post on ad hoc basis. This is a clear decision which seemingly has been taken in pursuance of the Fifth Central Pay Commission's report and certain posts have been upgraded. Necessarily, therefore, once they do

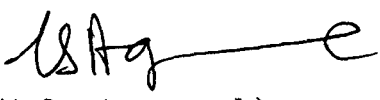


not adhere to old recruitment rules it implies that decision is obvious to go ahead with the said decision and, therefore, as already referred to above, the case of Y.Y. Rangaiah and Others has no application.

15. No other arguments have been advanced.

16. For these reasons, the OA being without merit must fail and is accordingly dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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