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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2012/2003

New Delhi this the 3rd day of March, 2005.

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

Dr. Poonam Srivastava,
W/o Dr. S.K. Srivastava,
Working as Senior Research Officer,
Sociology/Social Planning,
Planning Commission,
Yojana Bhawan,
New Delhi-110011.

-Applicant

(By Advocate Devesh Singh)

-Versus-

1. Union of India,
through its Secretary,
Planning Commission,
Yojana Bhawan,
New Delhi-110001.

(By Advocate Shri R.N. Singh)

2. Union Public Service Commission,
through its Chairman,
Dholpur House,
Shahjahan Road,
New Delhi-110011.

(By Advocate Mrs. B. Rana)

3. Smt. Roohi Siddiqui,
Planning Commission,
Yojana Bhawan,
New Delhi-110001.

-Respondents

1. To be referred to the Reporters or not? YES NO
2. To be circulated to outlying Benches? YES / NO

S. Raju
(Shanker Raju)
Member (J)

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O R D E R

Mr. Shanker Raju, Member (J):

Applicant impugns selection and recommendation of promotion of respondent No.3 (R-3, for short) to the post of Senior Research Officer (SRO, for short), (Sociology/Social Planning). A direction has been sought to quash the recommendation as well as order dated 13.8.2003, whereby R-3 was appointed to the post of SRO.

2. By an order dated 14.8.2003 passed by this Court appointment of R-3 has been made subject to the final outcome of the OA.

3. An amendment sought was allowed and carried out. On completion of the pleadings the matter has come up before us for adjudication.

4. Learned counsel for applicant Shri Devesh Singh referred to Planning Commission (Senior Research Officer) Recruitment Rules, 1985, wherein 24 disciplines have been carved out with the respective strength of force. Column 11 of the Rules provides that the departmental Research Officer with five years regular service in the grade shall also be selected for appointment to the post and the same shall be deemed to have been filled up by promotion, whereas 50% quota is earmarked for 'failing which' clause of 'direct recruitment' as well as 'transfer on deputation'. In the above backdrop it is stated that R-3 lacks essential qualifications. The requisite regular service in the grade is in the grade of Research Officer (Sociology/Social Planning) whereas R-3 had never worked for any length of service as regular RO in Sociology/Social Planning as per her bio data. It is stated that nature of work of RO in Programme Evaluation Organisation (PEO) which is a separate organisation is different and has nothing to do with the cadre.

5. The learned counsel further stated that essential qualifications meant for promotion are Masters Degree in Sociology with five years experience of work on problem of Social Welfare/Welfare of Backward classes or research in subjects relating to Social dynamics, Social Welfare and Public administration. Referring to the bio data submitted by R-3 it is stated that in none of the fields R-3 has experience.

Accordingly she is not eligible as per recruitment rules and was wrongly recommended and appointed on promotion.

6. Learned counsel for applicant states that in the provisional eligibility list of regular ROs of Planning Commission dated 1.8.2001 discipline of R-3 was shown as Social Development whereas in the final list issued in 2002 she had been shown to be in the discipline of Sociology/Social Planning, which is the outcome of a misrepresentation by R-3.

7. The learned counsel while referring to the final documents relating to Social Welfare Division states that experience in Sociology/Social Planning relates to Social Welfare and Women and Child Development whereas in the PEO the experience gathered would be evaluation of Community Development Programmes and other Intensive Area Development Schemes.

8. Learned counsel for applicant while drawing our attention to the recruitment rules of Planning Commission (Research Officers) Recruitment Rules, 1991 contends that for Research Officer 16 Divisions have been carved out, which includes Social Development and Sociology/Social Planning as two different Divisions. Accordingly for the post of RO (Social Development) apart from Masters' degree three years experience in the matter relating to Sociology and Social Service, including field experience is an essential qualification whereas for RO (Sociology/Social Planning) the qualification of experience is working on problems of Social Welfare, Welfare of Backward classes or allied problems. By referring to the above it is stated that in a case where ineligible person has been recommended de hors the rules who does not fulfill the essential qualification in the matter of selection one has a right

to agitate even after participation, as the selection process is vitiated by mala fides and is not held in accordance with the recruitment rules.

9. It is also stated that though the Tribunal in a judicial review may not assume the role of an expert body to evaluate the eligibility qualifications which have been gone into by the expert body consisting of persons with senior status, yet, if a wrong action has been taken, which is in contravention of the rules, the eligibility can be examined.

10. On the other hand, Union Public Service Commission (UPSC, for short), represented through Mrs. B. Rana filed their reply and stated on the strength of the following decisions that in the matter of requisite qualification the same should be left to be decided by the selection committee and in the selection process the Court would not assume the role of an appellate authority:

- i) Smt. Nutan Arvind v. Union of India, 1996 (1) SCALE 656.
- ii) UPSC v. Hiranaya Lal Dev, AIR 1988 SC 1069.
- iii) Dalpat Abasaheb Solenke v. Dr. B.S. Mahajan, AIR 1990 SC 434.
- iv) Anil Katiyar v. Union of India, 1996 (8) SCALE 57
- v) Dr. Ranjana Aggarwal v. Union of India, JT 1996 (1) SC 452.

11. Mrs. Rana contended that R-3 is a departmental RO and as per her bio data certified by the Planning Commission she had worked as RO from 13.8.99 to 20.2.98 and also worked on ad hoc basis as a SRO from 23.9.98 to 22.9.99 and has been working on the same post on ad hoc basis since 25.10.2000: Applicant has a Master Degree in Sociology and on the basis of ACR, bio data and personal talk being more

meritorious the Selection Committee recommended case of R-3 for appointment which is made strictly in accordance with the relevant rules, following the norms and cannot be interfered with.

12. Learned counsel for respondent No.1, Shri R.N. Singh, vehemently opposed the contentions and stated that applicant has not challenged the eligibility list of 2002, wherein R-3 on the basis of her work and experience has been shown to be in the discipline of Sociology/Social Planning. As such, applicant is estopped from taking a contrary view his right having been waived of and acquiesced as well.

13. As regards recruitment rules it is stated that the recruitment rules in column 11 talk of only five years regular service in the grade, which cannot be interpreted to mean the discipline but the pay scale. So, the only qualification is regular service which R-3 possesses.

14. As regards five years experience in subjects relating to Social dynamics, Social Welfare and Public administration, in the light of the bio data submitted it is stated that from 13.10.1989 to 20.9.98 R-3 had not only compiled and analyzed statistical data related to different fields of social welfare like women, children, physically handicapped aged etc. Technical examination has also taken place and comments were also prepared on Project of Social Welfare. R-3 has also dealt with the policy formulated on Development Planning relating to Social Welfare and Social Development and had examined Development Scheme and has Research experience in evaluation of programmes in various sectors, including health, welfare, education etc.

15. In this view of the matter it is stated that R-3 is qualified and eligible as per the recruitment rules and was accordingly considered, as applicant was short listed. It is stated that PEO is an integral part of

Planning Commission and post of RO (Social Development) in PEO is very much a part of it. R-3 has experience of Social Welfare etc. It is also stated that from 1989 till 1993 R-3 had functioned on ad hoc basis as RO and thereafter she was regularised and had also held ad hoc officiation on the promotion post to which now she has been regularly appointed.

16. R-3 is represented through Shri V.K. Rao who contended that R-3 is very much eligible under the rules. Interview had been conducted by an expert body, i.e., UPSC and applicant who was unsuccessful is estopped from challenging the results. It is denied that R-3 is not eligible and it is further stated that earlier in 2001 as well applicant as well as R-3 had faced interviews but were not selected and this clearly shows that on the earlier occasion also R-3 was very much eligible under the recruitment rules.

17. In the rejoinder contentions have been vehemently opposed and by drawing our attention to an office order dated 27.1.2004 it is stated that a Division-wise Channel of Submission and level of disposal in respect of technical Divisions, shows Social Justice & Women's Empowerment Division is different and PEO does not include experience in Social Welfare etc.

18. We have carefully considered the rival contentions of the parties and perused the material on record.

19. In the light of the decision of the Apex Court in **Madan Lal v. State of J&K**, 1995 SCC (L&S) 742 as well as **Vijay Siyal v. State of Punjab**, 2003 (9) SCC 401 an unsuccessful candidate in selection has no right to challenge the selection process as well as appointment on

remaining failure, unless the selection is vitiated on a glaring illegality or is an outcome of malice.

20. Keeping in light the above, the trite law is that when an expert body like UPSC holds selection either for direct recruitment or for promotion is that the short-listing criteria adopted, the eligibility criteria evolved and the conclusion drawn cannot be interfered with in a judicial review, unless the same is malafide or de hors the recruitment rules.

21. In **Joginder Singh & Ors. v. Roshan Lal & Ors.**, (2002) 9 SCC 765 the Apex Court observed as under:

“5. On the facts on record we see no justification for the High Court to have come to this conclusion. The High Court in exercise of its jurisdiction under Article 226 of the Constitution is not supposed to act as an Appellate Authority over the decision of the Departmental Selection Committee. If the Committee has been properly constituted, as in this case, and the post is advertised and a selection process known to law which is fair to all, is followed, then the High Court could have no jurisdiction to go into a question whether the Departmental Selection Committee conducted the test properly or not when there is no allegation of mala fides or bias against any member of the Committee. Merely because there were a large number of candidates who appeared on two days, cannot ipso facto lead to the conclusion that the process of selection was a farce and fair chance was not given. Normally, experienced persons are appointed as members of the Selection Committee and how much time should be spent with a candidate would vary from person to person. Merely because only two days were spent in conducting the interviews for the selection of Class IV posts cannot lead to the conclusion that the process of selection was not proper.”

22. It is also trite law in the light of the decision in **Chancellor v. Dr. B. Kar**, 1994 (1) SLR 17 (SC) that the question whether a candidate fulfills the requisite qualifications or not is a matter which should be entirely left to be decided by the Selection Committee.

23. In the matter of promotion and merit of selection process to a civil post, the Tribunal in a judicial review, should not play the role of an appellate authority or to sit in judgment over the selection process. The

Tribunal is also precluded from substituting its own view as to the interpretation of the short-listing criteria and the conclusion arrived at by the UPSC to adjudge the qualification etc.

24. In the above light, clause 11 of the recruitment rules of 1985 ibid requires for consideration of departmental RO for the post of SRO a regular service of five years in the grade. A grammatical and literal construction of this rule when the language is not ambiguous clearly postulates that five years regular service as RO in the specified pay scale is required for consideration.

25. As regards essential qualifications, it is no more res integra that R-3 possesses Degree in Sociology.

26. As regards experience in Research with subjects like Social dynamics, Social Welfare and Public administration, though recruitment rules for the post of RO, inter alia provide 16 disciplines, of which Sociology/Social Planning and Social Development are two different disciplines, but once it has come to recruitment rules of SRO the disciplines defined are Sociology/Social Planning and there is no reference to Social Development. This clearly shows that the experience as envisaged as an essential condition in Social Dynamics and Social Welfare not only deemed in the discipline of Sociology and Social Planning but also for the discipline of Social Development. By not providing Social Development as a discipline is a clear communication to the effect that if one possesses a Degree in Sociology having five years regular service in the grade, the research experience gained in the field of Social Dynamics, Social Welfare and Public Administration one is qualified and eligible to be considered for promotion. From the bio data, which is not disputed by applicant, R-3 has not only experience in Social

Dynamics but Social Welfare and Public Administration as well. It is not necessary that being in the Social Development one cannot get experience of Sociology and Social Planning. The office order which has been shown by the learned counsel for applicant and his attempt to distinguish those who are in Social Welfare Division and PEO is misconceived as both these fields involve within themselves not only the subject of Social dynamics, Social Welfare and Public administration as well.

27. We also find that R-3 had earlier worked for 4 years from 1989 till 1993 as RO and had been on ad hoc basis functioned as SRO. Her final eligibility where the discipline has been described as Sociology/Social Planning, which has not been assailed before us is an acceptance on the part of applicant of the fact that earlier participation of R-3 where she could not be successful clearly shows that even earlier she was found eligible as per the recruitment rules by the UPSC.

28. In our considered view the UPSC has rightly held R-3 as eligible and being more meritorious she has been selected and appointed to the post. The process and the criteria adopted are justifiable and are legally tenable.

29. Every unsuccessful promotee in a selection process has a tendency to question the appointment/promotion but once the same has been conducted in accordance with rules and no mala fides are apparent and proved to its hilt by laying down a foundation, this challenge is not within the scope of judicial review.

30. In the result, finding the OA bereft of merit it is dismissed. As a natural consequence appointment of R-3 is found legal and in accordance with rules. No costs.

31. The interim order is vacated.

Om elas
(S.K. Malhotra)

Member (A)

'San.'

S. Raju
(Shanker Raju)
Member(J)
3/3/2005