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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.18/2003

NEW DELHI THIS..... 27th DAY OF July 2004

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

Shri K S Deswal, s/o Sh. Hazari Lal,
R/o 5-C Press Block,
Behind Old Secretariat,
Delhi 110 054

.....Applicant

(By Shri S K Gupta, Advocate)

VERSUS

1. Govt of NCT of Delhi
through Chief Secretary,
Delhi Secretariat,
IG Stadium, IP Estate,
New Delhi
2. Secretary (Services),
Govt. of NCT of Delhi
Delhi Secretariat,
IG Stadium, IP Estate, New Delhi
3. Commissioner (Transport),
Transport Department,
5/9, Under Hill Road,
Delhi - 110 054
4. Secretary,
Union Public Service Commission,
Dhoulpur House, Shahjahan Road,
New Delhi
5. Shri Mohan Singh,
Presently working as
Deputy Director (Transport)
Office of Deputy General Manager,
I.S.B.T. Delhi

.....Respondents.

(By Shri Vijay Pandita Advocate for official
respondents 1 to 3
Sh. A K Bhardwaj, Advocate for R-4
Sh. S M Garg, Advocate for Private Respondents)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

Applicant filed this OA challenging the Recruitment
Rules dated 16.12.1999 which were made prospective and

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appointment of Respondent No.5 to the post of Dy. Director (Transport) on the basis of said Recruitment Rules and further seeking reliefs to quash and set aside the RRs for the post Dy. Director (Transport) published on 16.12.1999, vide order dated 25.11.99 and promoting Respondent No.5, order dated 11.11.2002. To declare the action of the respondents as illegal in delaying the notification of RRs and to direct the respondents to re-notify the RRs for Dy Director (Transport) by making them effective in accordance with GOI guidelines dated 18.3.1988 and also direct the respondents to re-convene the DPC and consider his case alongwith others. And if DPC ~~finds him~~ fit he may be promoted from the date of earlier DPC held with all consequential benefits i.e. seniority, salary and difference of pay of the higher post.

2. The brief facts of the case are that Applicant was selected as Workshop Superintendent after proper selection conducted by the Office of Respondent No. 4 and on accepting the recommendations of UPSC made in September 1987 applicant joined on 13.11.87.

3. Applicant states that on abolition of post of Principal (Transport) a proposal for amending the Recruitment Rules for the post of Dy. Director (Transport) was made with a view to bring the post of Workshop Superintendent as one of the feeder cadre alongwith other feeder cadres by GNCT with the concurrence of the Govt of India. The proposal was sent to UPSC and O/o Respondent No.4 on 16.2.99 ~~vide~~ vide their letter 16.2.99



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directed that amended Recruitment Rules should be notified within a period of 10 weeks as per the Govt of India instructions published in OM dated 18.3.88. It is further stated that as per provisions of the amended RRs for the post of Dy. Director (Transport) under the head Promotion a candidate must have eight years regular service either as MLO, CMVI, TO, Enforcement Officer or Workshop Supdt on regular basis. ² The applicant ~~is~~ become eligible for consideration for promotion prior to the concurrence of the UPSC dated 16.2.99 as he joined on 13.11.1987 as Workshop Superintendent. Respondent No. 5 (Sh. Mohan Singh) who was working as Enforcement Officer joined the Office of respondents on appointment on 6.9.1989, thus he is junior to the applicant as he joined the equivalent feeder cadre after the applicant. To give the benefit to the respondent No. 5, the respondents have not notified the Recruitment Rules within stipulated period of 10 weeks w.e.f. 16.2.99 and conducted the DPC on 14.10.1999 when no other candidate except respondent No. 5 was eligible and fit for promotion as other officers in feeder cadre were facing vigilance cases. If the RRs would have been notified within stipulated time the applicant was senior most amongst eligible person in feeder cadre and could have been promoted as Dy. Director prior to the respondent No. 5. But the respondents notified the Recruitment Rules on 16.12.1999 just after holding the DPC.

4. Applicant further state that on knowing about the amendment of RRs, submitted a representation on

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16.8.2000 followed by repeated reminders. Prior to this he had also submitted a representation on 4.6.99. When no response from respondents the applicant approached the Tribunal by filing OA No. 1733/2002 which was disposed of by order dated 9.7.2002 with direction to respondents to dispose of the representation of the applicant within two months. On non compliance of the Tribunal's order by the respondents applicant filed a CP. Notices were issued to the respondents on which they have issued impugned order dated 11.11.2002 but remained silent over main issue relating to notification of amended RRs and given undue benefit to respondent No.5. While disposing the CP the Tribunal has given the liberty to assail this order in separate proceedings in accordance with law. Hence this OA.

5. The main grounds taken by the applicant are as under:

- i) despite concurrence of the UPSC dated 16.2.99 given in the proposal of the GNCT for amending the Recruitment Rules within a period of 10 weeks , these have been lingered on by the respondents only to give benefit to Respondent No. 5 ;
- ii) In the order dated 11.11.2002 no reasons have been explained for delaying the notification of the RRs;
- iii) by holding the DPC prior to issue of amendment in RRs the respondents deprived the applicant by excluding the applicant from the zone of consideration was bad in law ;
- iv) the vacancy filled in November 1999 which pertains to 1994 for which there was conscious decision not to fill up the vacancy and the process of amendment of RRs was initiated with a view to bring Workshop Superintendent as one of the feeder cadre ;

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v) having knowledge that if the Recruitment Rules are amended within 10 weeks and applicant will become eligible , respondents have intentionally delayed the notification of the RRs and conducted a DPC and only after than notified the amended RRs,thus given undue benefit to Respondent No. 5 who was junior to the applicant .

6. Respondent No. 4 (UPSC) in their counter has stated that the proposal for amendment of Recruitment Rules for the post of Dy. Director (Transport) was received by them on 9th December 1994 which were approved by the Commission on 15.2.99. The advice of this office was communicated to the GNCT vide letter dated 16.02.1999 and the GNCT issued the amended RRs on 16.12.99. It is further stated that on receipt of a proposal from the GNCT, a DPC was held in UPSC on 14.10.99 for a post of Dy. Director (Tpt) for the year 1995-96 and only one feeder grade officer was eligible for consideration for the vacancy of that particular period i.e. 1995-96. But the Deptt. concerned has not certified the integrity of the said officer and assessment has to be kept in sealed cover. Consequent upon this the said vacancy was carry forward for 1996-97. For 1996-97 vacancy again same officer was eligible for consideration but due to non certification of integrity, the assessment was again kept in sealed cover. GNCT later intimated three vacancies for the vacancy year 1997-98 excluding the vacancy of 1996-97 which was carried forward. Thus total vacancies for 1997-98 became four and on the basis of the assessment for 1997-98 vacancies only one feeder grade officer was recommended for appointment.

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7. It is further stated that from the contents of the OA filed by the applicant none of the action of the Commission has been challenged by the applicant and the UPSC has been impleaded in the case unnecessarily. Therefore, the commission stated that the OA deserves to be dismissed.

8. In the rejoinder filed by the applicant on the counter filed by Respondent No. 4 the applicant stated that the UPSC admitted that the advice was communicated on 16.2.99 but the GNCT Delhi has notified the recruitment rules only on 16.12.99. The applicant has further stated that though the Office of Respondent No. 4 is a proforma party but the OA has to be allowed.

9. The respondent No.3 in their counter contended that the OA is not maintainable in view of the Judgement of the apex court in the case of V K Sood Vs Secretary Civil Aviation (1993 Suppl. 3 SCC 9) wherein it has been held that prescribe the particular qualification for a post is not the function of the Supreme Court and the President or authorised person is entitled to prescribed the method of selection, qualification for appointment to an office or to a post under the state. Respondent further stated that court/Tribunal cannot direct the Govt to frame statutory Rules or amend existing statutory rules under Article 309 in a specific manner. In support of this the judgement in the case of Mallik Vajana Rao Vs State of A P 1990 (2) SCC 707 has been cited. It is further stated that in the case of Bishan Swaroop Vs.

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Union of India reported in 1974 SC 1918 Supreme Court has held that the court is not concerned with the Govt policy in recruiting officer to any service (para 17). The Hon'ble Supreme Court's judgement in the case of **State of MP Vs Dharam Bir** reported in (1998 (6) SCC 165 has held as under:

"The court as also the Administrative Tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Govt under Article 309 of the Constitution."

The OA is not maintainable in view of Rule 10 of Central Administrative Procedure Rule 1987 in which it is laid down that an application shall be based upon a single cause whereas the applicant is seeking multiple reliefs. It is also contended that the instant application is barred by limitation by Section 19, 20, 21 of the Administrative Tribunal Act 1985 and is liable to be dismissed with costs.

10. Respondent further stated that RRs. for insertion of the post of Workshop Superintendent were issued on 16.12.99 and the notification in respect of Sh. Mohan Singh (R-5) was issued earlier. Based on this R-5 was given seniority w.e.f. 8.9.97 as his promotion was approved by the Hon'ble Lt. Governor, Delhi on the basis of UPSC recommendations. It is further contended that notification was issued in Delhi Gazette on 16.12.99 as the process has taken long time and the same was time

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consuming job . It is denied that the Department has given undue benefit of respondent no. 5 by not notifying the RRs . Notifying the post of Enforcement Officer as feeder cadre for promotion to the post of Dy. Director also took nine months for processing the same at various stages and in getting approval of concerned competent authorities and thus this delay was not at all deliberate so as to deny promotion to the applicant. The DPC for Dy. Director was held on 14.10.99 when the applicant was not eligible as Workshop Supdt was not a feeder post. In this DPC Sh. Mohan Singh Enforcement Officer was found eligible and was promoted as Dy. Director.

11. In rejoinder to counter filed by the Respondent 3 the applicant denied the preliminary objections raised by the respondents. Applicant states that the sole ground of filing this application is non following the GOI instructions about notifying of the RRs within 10 weeks after receiving the concurrence from UPSC on 16.2.99. By this delay the right of the applicant has been seriously prejudiced as he was not considered for promotion by the DPC of 14.10.1999. The respondents convened the DPC and notified the amended RRs later date whereas, as per instructions in OM dated 18.3.88, the RRs were to be amended and then DPC was to be convened. In the representation the prayer was made for re-notification of the RRs and thereafter issuance of direction for convening a DPC.

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12. Respondent No. 5 contested the pleas made by the applicant in the OA. The preliminary objection raised was that the application is barred by limitation as the applicant has sought quashing and setting aside the RRs for Dy. Director published on 16.12.99 and promotion order dated 25.11.99 vide which he (respondent No. 5) was promoted thus the OA is hopelessly barred by limitation under section 21 of the Administrative Tribunal Act 1985. It is contended that the applicant in his representation dated 14.8.2000 neither challenged the recruitment rules for Dy. Director (Tpt) nor questioned the promotion of Respondent No. 5 as Dy. Director (Tpt) and only prayer was that applicant being the senior most eligible candidate for the post of Dy. Director (Transport) his case may be resubmitted to the Chief Secretary / UPSC for regular promotion as per the amended recruitment rules. This clearly shows that applicant had accepted the RRs notified on 16.12.99 as well the promotion of Respondent No. 5 as Dy. Director (Tpt) ordered on 25.11.99. The respondent stated that the present OA is barred by the principles contained in ORDER II, Rule-2 of Code of Civil Procedure and also the principles of constructive res judicata and the OA deserves to be dismissed.

13. We have heard counsel for the parties and gone through the documents placed on record. The facts of the case are not in dispute. The DPC for promotion to the post of Dy. Director (Transport) was held on 14.10.99 for the year 1994-95 wherein respondent No. 5 was selected. Amended recruitment rules were published on 16.12.99.

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Admittedly the applicant was not in the feeder cadre as per the old recruitment rules. However, he became eligible for consideration to the post of Dy. Director (Transport) vide amended recruitment rules. The grievance of the applicant is that though the UPSC had approved the amendment of the recruitment rules vide their letter dated 16.2.99 and as per the Govt. of India's instructions contained in OM dated 18.3.98 the rules should have been notified within a period of ten weeks the same was not done. The notification was delayed till after holding of the DPC, thereby the applicant was denied his right to be considered for promotion to Dy. Director (Transport) in the DPC held on 14.10.99. He was senior to respondent No.5 thus by delaying the notification of the recruitment rules the respondents have favoured Respondent 5. He has prayed for setting aside the promotion order of respondent no. 5 and for re-notification of the recruitment rules within ten weeks from the date of receipt of concurrence by the UPSC and re-convening the DPC for considering the case of the applicant along with others.

14. This was strongly contested by the respondents pointing out that there was no deliberate delay in notification of the rules after receipt of the approval from the UPSC. Even in the case of respondent no. 5 the notification could be notified nine months after the approval was received from UPSC. Therefore the contention of the applicant that there was a deliberate delay is without merit. Moreover the OM referred to by the applicant is an instruction and as such it does not confer

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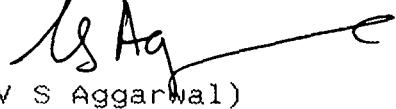
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the right on the applicant. The respondents relied upon on the case of Union of India & Others Vs. Majji Jangamayya & Others (1977 SCC 606) where it was held that administrative instructions if not carried into effect for good reason cannot confer the right. Respondents also relied upon the case of Y V Rangaiah & Others Vs. J. Sreenivasa Rao & Others (1983-1 SCC (L&S) 382) where it was held that vacancies in the promotional post occurring prior to the amended rules must be filled in accordance with unamended rules.

15. We find that the applicant has not been able to show that there was any deliberate delay on the part of the respondents in notification of rules. He has merely asserted that the respondents had delayed the notification for favouring respondent 5. The guide-lines dated 18.3.88 relied upon by the applicant are administrative instructions and in view of the law laid down in the case of UOI and UOI & Others Vs Majji Jangamayya & Others (supra) do not bestow a right on the applicant. Further the case of Y. Rangia and others (Supra) also supports the respondents in holding the DPC as per the old recruitment rules.

16. In view of the above we find no merit in the OA and is accordingly dismissed. No order as to costs.


(S.A. Singh)
Member (A)


(V S Aggarwal)
Chairman

Patwal/