

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.2942/2019
MA No.3235/2019**

This the 3rd day of October, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)

1. Surender Pandita aged about 42 years
S/o late Shri Radha Krishan Pandita,
Working as Operation Officer, Group-A,
O/o Director General of Civil Aviation,
Opp. Safdarjung Airport, Aurobindo Road,
New Delhi.
2. Ajay Pal Ogrey aged about 34 years
S/o S. P. Singh Ogrey, working as
Operation Officer, Group-A,
O/o Director General of Civil Aviation,
Opp. Safdarjung Airport, Aurobindo Road,
New Delhi.
3. Sudeesh Behl aged about 39 years
S/o Sudershan Kumar Behl,
Working as Operation Officer, Group-A,
O/o Director General of Civil Aviation,
Opp. Safdarjung Airport, Aurobindo Road,
New Delhi. ... Applicants

(By Mr. Anupam Verma, Advocate)

Versus

1. Union of India through Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhawan, Safdarjung Airport,
New Delhi-110003.
2. Director General,
Directorate General of Civil Aviation,
Technical Centre, Government of India,
Rajiv Gandhi Bhawan, New Delhi.

3. Union Public Service Commission
through its Secretary, Shahjahan Road,
New Delhi.
4. Secretary,
Department of Personnel & Training,
North Block, Central Secretariat,
New Delhi-110001. ... Respondents

(By Mr. R. V. Sinha and Mr. Amit Kumar, Advocats)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicants are working as Operation Officers in the office of Directorate General of Civil Aviation (DGCA), the 2nd respondent. The 1st respondent framed the “Ministry of Civil Aviation, Directorate General of Civil Aviation (Operations) Group ‘A’ Posts Recruitment Rules, 2018”, prescribing the method of recruitment to the posts of – (1) Director of Operations (DO); (2) Deputy Director of Operations (DDO); (3) Assistant Director of Operations (ADO); and (4) Operations Officer (OpO). Apart from indicating the number of posts and pay matrix, the Rules have prescribed the method of appointment, i.e., whether by way of promotion, or by direct recruitment, for each of the post.

2. The next promotion from the post of OpO is to ADO. While the cadre strength of OpOs is 5, that of ADO is

mentioned as 65. The cadre strength of the other two posts, i.e., DDO and DO, is 26 and 8 respectively. The method of appointment to the post of ADO is 97% through direct recruitment, and 3% by promotion, failing which, by deputation.

3. The applicants contend that the very structure of the organisation does not fit into the norms stipulated by the DoP&T, and that providing for appointment to the extent of 97% by direct recruitment to the posts of ADO, would virtually render the chances of OpOs, not only meagre but also dismal. It is stated that representations made in this behalf were not considered, and attempts are being made to fill the post of ADO through direct recruitment against 37 posts. Direction is also sought against the respondents to re-frame the Rules, in conformity with the office memorandum dated 31.03.2015 issued by the DoP&T.

4. Shri Anupam Verma, learned counsel for the applicants, submits that the structure of an organisation, including the 2nd respondent, is required to be in a pyramid shape, wherein the posts in the feeder category are more, and those in the higher categories are less in number, in such a way that at the top level only one authority exists. He contends that

when the cadre strength of the OpOs at the bottom of the service under the Rules, is 5, the provision of 65 in the immediate higher post is contrary to all settled norms and the guidelines issued by the DoP&T. He submits that further injustice to the applicants is the stipulation of 97% of the appointments to the post of ADO through the process of direct recruitment, leaving hardly any scope for promotion of those in the feeder category.

5. Shri R. V. Sinha, learned counsel for the respondents, on the other hand, submits that the structure of the cadre in a service depends upon the needs and activities thereof, and a standard pattern cannot be stipulated for that purpose. He further submits that the work of the 2nd respondent organisation is more at the level of ADO, and accordingly the cadre strength thereof is more. He submits that the guidelines issued by the DoP&T are to be kept in mind while framing the Rules.

6. The main challenge in the OA is to the Recruitment Rules issued vide notification dated 16.02.2018 (Annexure A-1). Advertisement No.21/2018 issued by the UPSC proposing to select 37 candidates for appointment to the post of ADOs is also challenged, but it is consequential to the Recruitment Rules.

Therefore, the main issue to be decided in this OA is as to whether the Recruitment Rules, insofar as they relate to the post of ADO, suffer from any legal infirmity.

7. Four posts are covered by the Rules, i.e., (1) DO-8; (2) DDO-26; (3) ADO-65; and (4) OpO-5. The method of recruitment to these posts is as under:

(1) DO : By promotion failing which by deputation (including short term contract).

(2) DDO : By promotion failing which by deputation (including short term contract).

(3) ADO : 97% by direct recruitment. 3% by promotion failing which by deputation (including short term contract). (Provision is also made for filling up the vacancies of direct recruit ADOs, who are away on deputation, long illness or study leave, for a period of one year or more, through deputation)

(4) OpO : By direct recruitment.

8. The applicants rely more upon OM dated 31.03.2015 issued by the DoP&T. The subject thereof reads as under:

“Step guide for processing of the proposal for framing/amendment of Recruitment Rules.”

A typical form, containing 13 columns is stipulated, in which all the details pertaining to every post in a given Service covered by the Recruitment Rules, is furnished. The method of

appointment is indicated in column 10. The guidelines with reference to column 10, read as under:

- The methods to be prescribed and the percentage of vacancies to be filled by each method in each individual case to be decided keeping in view inter alia
 - (i) Structure of the cadre/hierarchy
 - (ii) Need for induction from outside through Direct Recruitment or Deputation (including short-term Contract)/Absorption on functional considerations.

Need to provide for adequate promotional avenues to qualified personnel in the feeder grade to sustain the morale and efficiency of the cadre.

- While fixing the proportion for promotion, to ensure that the feeder grade concerned has sufficient strength to sustain the same. The feeder grade to promotion grade ratio should be 2 at least for the method of recruitment as 'Promotion failing which Deputation'. In case of feeder grade to promotion grade ratio is 3 to 5 times, the method may be prescribed as 'Promotion'.
- Direct recruitment at successive level to be avoided.
- Direct recruitment against isolated posts to be avoided.
- The method of short term contract could be included when services of suitable officers belonging to non-government organizations (ex. Universities, recognized institutes, public sector undertakings etc.) are required for appointment to teaching/research/scientific or technical posts.
- Where absorption is prescribed in the RRs the absorption will apply only to officers belonging

to the Central and State Government and UT Administrations.

- The composite method of deputation/promotion or deputation (including short term contract)/promotion to be prescribed where the field of promotion consists of only one post.

9. From a perusal of the above guidelines, one of the important aspect to be kept in mind, is the fixation of the proportion for promotion. The OM has no bearing upon the fixation of number of posts at each level in a Service. That would depend exclusively upon the needs and nature of activities undertaken by the concerned Service.

10. The applicants can certainly have a grievance, if their promotion chances are completely taken away. Their cadre strength is 5. Even according to the OM dated 31.03.2015, the Department must ensure that the feeder grade has sufficient strength to sustain the promotion grade. In other words, the size of the feeder grade must be such that there should not be any difficulty at any given point of time to fill the posts in the promotion grade. If adequate number of officers are not available in the feeder category, the posts in the promotion category are prone to remain vacant. Normally, the posts in the feeder category are more, compared to those in the promotion category. According to the present Rules, 2 posts in the ADO

cadre are available for the OpOs, which has the cadre strength of 5. By any standard, this ratio cannot be treated as less or inadequate. At no given point of time, all the 5 can be promoted as ADOs.

11. Once the applicants are assured of adequate avenues of promotion, they should not have any grievance about the method of recruitment to the remaining posts in the promotion category.

12. Civil Aviation is a highly specialized and technology-oriented organisation. Technology of very high standard and expertise of very high order, are needed for it. The applicants are not able to point out with any supporting material that the fixation of cadre strength for the post of ADO is incorrect, or, for that matter, the cadre strength of OpOs should have been more. Courts and Tribunals cannot enter such sensitive areas. It should also be kept in mind that Services are created, structured and re-structured, keeping in view the exigencies and needs. It is incidental that in some cases, the promotions take place within a short time, while in others, either they are delayed, or there are no promotions at all. The Government has taken care to ensure that if the promotion is delayed up to some time, or is completely denied

for want of vacancies, the measures such as ACP/MACP/NFU are provided for. The Recruitment Rules cannot be found fault with, simply because they do not meet the aspirations of some of the employees.

13. We do not find any merit in the OA. The same is accordingly dismissed. There shall be no order as to costs.

Pending MAs also stand disposed of.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/