

(2019) 04 CAT CK 0034

In the Central Administrative Tribunal

Case No : Original Application No. 747 Of 2015

Dr. Shachi Kant (Group A Officer)

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 23-04-2019

Acts Referred:

Citation : (2019) 04 CAT CK 0034

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, J

Bench : Division Bench

Advocate : Vikas Singh, Varun Singh, Srishti Banerjee, Sneha Baul, Suren Uppal

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

1. The applicant was in the Bihar Administrative Services as Deputy Collector up to the year 1995. The Kendriya Vidyalaya Sangathan, the 2nd respondent issued a notification in the employment news dated 11-17 December, 1993 inviting applications for appointment to the post of Education Officer. The qualification stipulated for that post was Master Degree with minimum 55 percent of marks, Degree or P.G. Diploma in Management; and five years of teaching experience. The applicant responded to the advertisement and was selected and appointed as Education Officer on November, 1995. Thereafter, he was promoted to the post of Assistant Commissioner (now called Deputy Commissioner) in August, 2001 and as Deputy Commissioner (now called as Joint Commissioner (Training)) in January, 2009. The next promotion is to the post of Additional Commissioner (Academics).

2. The Recruitment Rules were amended in the year 2001. According to the said rules the Joint Commissioner with one year service would be eligible to be considered for promotion to the post of Additional Commissioner. However, the case of the applicant was not considered for promotion on the ground that he did not hold the qualification of Degree in Education i.e B.Ed. When steps were again

initiated for promotion to the post of Additional Commissioner, the applicant filed this O.A. During the pendency of the O.A the 3rd respondent was selected and appointed and a stipulation was made in the appointment letter that his appointment shall be subject to the outcome of the O.A.

3. The applicant contends that the qualification of B.Ed. was not stipulated when he entered the service and the office memorandum issued by DoP&T insisted that whenever rules are amended, the interest of the employees in the organisation and particularly those in the feeder category must be protected and such protection is not granted in the instant case.

4. It is also pleaded that the 2nd respondent did not treat the said qualification as essential, as is evident from the fact that when two officers were appointed on deputation, the requirement was either waived or the rules were suspended. Other contentions are also advanced.

5. The second respondent filed counter affidavit stating that the applicant was not considered for promotion to the post of Additional Commissioner since he did not hold the requisite qualification. It is also stated that the rules were amended way back in the year 2001, and at that time the applicant was not in the feeder category for promotion to the post of Additional Commissioner. As regards the plea of the applicant about the appointment of two officers without qualification, on deputation, it is said that due to exigencies of service, such step was taken.

6. Respondent no. 3 filed counter almost on the same lines. He contends that once the qualification is stipulated under the rules for promotion, the same cannot be ignored and that the applicant does not have any vested right to be considered for promotion without holding the requisite qualification.

7. We heard Mr. Vikas Singh, learned Senior counsel, Mr. Varun Singh and Ms. Srishti Banerjee for applicant and Mr. Prateek Bhalla for Mr. Gyanendra Singh for respondent no. 1, Mr. S. Rajappa for respondent no. 2 and Mr. Suren Uppal with Ms. Sneha Baul for respondent no. 3.

8. The applicant responded to the advertisement issued by the respondents way back in the year 1993. By that time, he was holding the administrative post in Bihar State Service. What appears to have prompted, if not induced the applicant, is the promise contained in the advertisement; which reads as under :-

"Career Growth : The Education Officers are eligible for promotion to the post of Assistant Commissioner (pay scale of Rs.3700-5000/-). Deputy Commissioner (pay scale Rs.4100-5300/- and other senior appointments in Kendriya Vidyalaya Sangathan)."

9. When the applicant joined the service, nowhere in the recruitment rules it was stipulated that holding of B.Ed. Degree is essential for promotion to the post of Additional Commissioner. In a way, it was only in the year 2001 that such stipulation was made, that too in case of appointment by deputation to the post of Additional Commissioner.

The relevant rules reads as under :-

"10. Method of Recruitment whether by direct recruitment or by promotion or by deputation/transfer & percentage of the vacancies to be filled by various methods

By promotion failing which by deputation

11. In case of Recruitment by promotion/by deputation/transfer grades from which Promotion/ transfer to be mad

Transfer on Deputation From amongst officers of the Central Govts./ State Govts./Defence Services/Autonomous Bodies possessing the Following qualifications. i.At least 2nd class Master's Degree ii. Degree in Education iii. Holding analogous posts in the pay scale of Rs.14300-18300 for a Minimum period of one Year. By Promotion From amongst Dy. Commissioners with one-year regular service as such in the qualification and experience prescribed for deputationists. The period of deputation shall be three years, extended by two years."

10. From this, it becomes clear that stipulation as to the Degree in Education was basically for appointment by deputation and it was in the form of adoption; to promotions. In the service book of applicant it is mentioned that he holds B.A Degree. It is stated that applicant appeared in examination for that course, but did not complete it. The applicant pleads that nowhere in the Recruitment Rules it is stipulated that it was an essential qualification for promotion to the post of Assistant Commissioner and thereafter to other superior posts; at a time when he joined the service.

11. The respondents raised the plea that the applicant is not holding the Degree in Education as required under the present rules. It is not uncommon that the recruitment rules are amended in an organisation from time to time. However, such amendments are not expected to affect the rights of the existing employees, particularly those in the feeder category.

12. The DoP&T issued instructions in this behalf way back in the year 1988. The relevant portion thereof reads as under :-

"3.1.3. Where the eligibility service for promotion prescribed in the existing rules is being enhanced (to be in conformity with the guidelines issued by this Department) and the change is likely to affect adversely some persons holding the feeder grade posts on regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules, could be included in the revised rules."

13. From this, it becomes clear that the concerned authorities are required to incorporate a note, to protect interests of the existing employees. Though, the mention is to the employees in the 'feeder category', it is also a settled principle of law that once the individual enters the service of an organisation, the rules

cannot be amended thereafter, to his detriment. An individual joins the service only after ascertaining the method of progression and other avenues. Such avenues cannot be denied to him after he entered the service, or half way through. It is a different matter that such amendments can be enforced in respect of those who enter into the service subsequent to such amendments.

14. Many a time, the amendment may be warranted on account of the special circumstances. The situation may be such that an incumbent cannot hold the post, unless he holds the qualification so stipulated. In such a case, other general rule needs to give way for the effective functioning of the organisation. Viewed in this context, if holding Degree in Education was so essential that the incumbent cannot discharge its duties without it, a different situation would have arisen.

15. Four years after the rules were amended, the 2nd respondent appointed one Sh. Bheemanna as Additional Commissioner (Academics). Admittedly, he did not hold the Degree in Education. After the deputation of Bheemanna was over, the post was filled by another person named Sh. Dinesh Kumar, again on deputation basis. Here again, the incumbent was not holding Degree in Education. This averment of the applicant is not denied by the 2nd respondent. On the other hand, it is stated that in the first case, the rules were relaxed and in the second case, rules were kept in abeyance. This discloses that the respondents did not treat the Degree in Education as a sacrosanct, or essential qualification.

16. When one takes note of the principle of law that the service rules cannot be amended to the detriment of the existing employees or the fact that the respondents have chosen to relax or ignore the qualification when appointments were made through deputation, the applicant was certainly meted out with the discriminatory treatment.

17. The very purpose of his joining the service of the 2nd respondent, by leaving his lucrative career in the State Administrative Services was defeated.

18. We, therefore, allow the O.A, set aside the appointment of 3rd respondent and direct the respondents to consider the case of the applicant without insisting on holding of the Degree in Education. Since the 3rd respondent was appointed during the pendency of the O.A, he shall give way, in case the applicant is considered and appointed in compliance of the directions in this O.A. This exercise shall be completed within two months from the date of receipt of a certified copy of this order. There shall be no order as to costs.