
(2013) 01 DEL CK 0089
In the Delhi High Court
Case No : W.P. (C) 4310/2001

Khem Chand

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0089

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner lays a challenge to an order dated October 30, 2000 passed by the Central Administrative Tribunal dismissing OA No. 772/1999. The grievance of the petitioner was the act of the respondents to give retrospective effect to an amendment made to the DRTC Rules with effect from August 26, 1995. The case of the writ petitioner before the Tribunal was that having rendered five years' service as a Senior Technical Assistant he became eligible to be considered for promotion to the post of Technical Officer Grade ?A? and this happened in the year 1995. No Selection Board was constituted in the said year as also the next year. It was only after SRO 177 was issued amending Rule 8 of the existing Rules in the year 1997 with retrospective effect as of the year 1995 was the Selection Board constituted which did not recommend petitioner for being promoted.

2. Impugned order passed by the Tribunal would reveal that when the matter was heard for disposal there was no representation from the side of the petitioner before the Tribunal and on the subject of retrospective amendment to the Recruitment Rules, the Tribunal noted that the decision of the Supreme Court reported as B.S. Vadera Vs. Union of India (UOI) and Others, permitted Recruitment Rules to be amended with retrospective effect.

3. The Tribunal has also noted that the effect of the amendment to the Rules was

to change the hitherto-fore procedures for promotion which was vacancy based with reference to a benchmark to determine eligibility, to a merit based Flexible Complimentary Scheme.

4. The Tribunal has noted that after the amendment was made, Review Boards were held with retrospective effect i.e. consider the eligible candidates as of the year 1995-1996 and for the year 1996-1997, but as per the amended Rules which had a retrospective operation.

5. Except for harping before us that the Rules could not be amended retrospectively, learned counsel is not able to point out and indeed we do not find any cogent grounds urged to question the retrospective amendment of the Rules either in the Original Application or the writ petition.

6. Now, retrospective amendment of the Recruitment Rules has been considered and found to be legal by the Supreme Court in various decisions.

7. In B.S. Vadera's case (supra), noted by the Tribunal, the Constitution Bench of the Supreme Court held that by virtue of the power conferred upon it the Union has the right to amend Recruitment Rules with retrospective effect. The decision would hold that if a Rule is amended with retrospective effect the only challenge to the Rule is on grounds such as breach of Part-III or other constitutional provisions.

8. We do not find any such challenge being made in the instant case and thus before disposing of the writ petition formally would note that after giving effect to the amendment cases of all eligible candidates who had rendered five years' service were considered firstly as of the year 1995 and thereafter as of the year 1996 which included the petitioner and the petitioner was not found suitable for promotion.

9. The writ petition is dismissed. No costs.