

(2013) 03 DEL CK 0283
In the Delhi High Court
Case No : W.P. (C) 8953/2011

Smt. Vinod Malhotra and Others

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Citation : (2013) 137 DRJ 714

Hon'ble Judges : Pratibha Rani, J; Pradeep Nandrajog, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Indian Trade Promotion Organization (ITPO) is an autonomous body fully funded and controlled by the Union of India. It has a hierarchical cadre structure. Instant writ petition concerns promotion to the post of Assistant Manager, and we note that as per the existing Recruitment Rules for the post of Assistant Manager, 1/3rd posts have to be filled up by direct recruitment and the remaining 2/3rd posts by promotion; and there are two channels of promotion. One channel is from the Secretarial Staff i.e. Senior Investigator. The other channel is from the Stenographer cadre i.e. Personal Assistant. As per clause-8 of the applicable Recruitment Rule, the method of recruitment is as under:-

Method of Recruitment:

1. 66 2/3% (50% From Senior Investigator and 16 2/3% from Personal Assistant by promotion from departmental candidates with 4 years service in TFAI as Senior Assistant/Personal Assistant failing which 8 years service in TFAI as Assistant/Stenographer). Departmental candidates will be required to pass in - House Test in Management in not more than three attempts during their service in the feeder grades.
2. 33 1/3% by direct recruitment.

And suffice would it be for us to note that 66 2/3% posts of Assistant Managers stand further bifurcated for being filled up by promotion. 50% to be filled up by Senior Investigator and the remaining 16 2/3% from amongst Personal Assistants. As regards Personal Assistants, the requirement for eligibility to be promoted was 4 years' service as Senior Assistant/Personal Assistant failing which 8 years' service as an Assistant/Stenographer. For Senior Investigators there was no such eligibility condition. However, both had to clear an in-house management test.

2. The service of the employees of ITPO was governed by "Trade Fair Authority of India Recruitment Rules, 1988". Rule 11 of the aforesaid rules provides for the promotions of the employees of ITPO. It reads as under:

XI Promotions:

(a) All promotions will be made in accordance with the recruitment rules and on the recommendations of the duly constituted DPCs. The composition of DPCs will be as for Selection Committee indicated in Rule X above.

...

...

(d) The quota for direct recruitment and departmental promotion will be as laid down in the Schedule and will apply to all vacancies which existed on 1.3.77 as also those which occurred thereafter, Vacancies which are not filled in accordance with the roster of vacancies will be carried forward for filling up in accordance with the recruitment rules as on future date.

3. It appears that due to not acquiring the eligibility norm i.e. rendering the requisite service in the cadre of Stenographers, Senior Assistants and Personal Assistants could not be promoted within their quota to the post of Assistant Manager, and since the requirement of ITPO necessitated Assistant Manager posts to be filled up, persons in excess of their quota from amongst Senior Investigators were promoted creating an imbalance. 72 posts of Assistant Managers came to be filled up by Senior Investigators and there was a shortfall in the posts occupied by Personal Assistants; as against 24, much less (number not known as it is not disclosed in the pleadings) were promoted. Representations were made by Personal Assistants to be promoted as Assistant Managers so that balance between the two feeder posts could be maintained.

4. 5 posts of Assistant Manager were lying vacant. Treating all 5 to be back-log vacancies, the 5 petitioners working as Personal Assistants were approved to be promoted as Assistant Manager by the Chairman-cum-Managing Director ITPO and in pursuance thereof vide Office Order dated June 07, 1995, the 5 petitioners were promoted as Assistant Managers.

5. A dispute was raised by persons working as Senior Investigators who claimed that as per the applicable Recruitment Rule the said 5 posts had to be allocated

in their quota since the 2/3rd promotional posts were split up further in the promotion 50:16 2/3 for Senior Investigators and Personal Assistants.

6. On June 14, 1995 petitioners were served with an Office Order purporting to keep their promotion in abeyance. They immediately approached this Court by and under WP(C) 2265/1995 and on June 19, 1995 obtained an ex-parte ad-interim stay of the order dated June 14, 1995. They continued to work as Assistant Managers by virtue of the interim order.

7. The department had referred the matter to Ms. Bindu Batra, Sr. General Manager, who opined as per report dated July 05, 1995 that as against 72 Senior Investigators promoted as Assistant Managers since March 01, 1982, 18 promotions were effected from amongst Personal Assistants. We notice at this stage that if the ratio 50:16 2/3 had to be maintained, since 72 Senior Investigators were promoted the number of Personal Assistants to be promoted ought to have been 24. Her report further brought out that 2 Senior Investigators were promoted as Assistant Managers on ad-hoc basis. In other words, her report brought out that not only on substantive basis, excess Senior Investigators were promoted but additionally 2 more were occupying the promotional post on ad-hoc basis. She thus opined that the promotion of the petitioners was as per Rules.

8. The matter was referred to DoP & T for opinion, which opined that the cumulative vacancies could not be treated as back-log. Since full facts were not brought to the notice of DoP & T, as directed by this Court vide order dated August 02, 2002 passed in the writ petition, the matter was directed to be placed once again before DoP & T, which opined as under:-

On an analysis of the facts and the circumstances in the present case, it becomes clear that the Recruitment Rules do not empower the CMD of the ITPO to fill vacancies which were in the share of the P.As cadre by promotion of Investigators. The Recruitment Rules provide for carry forward of vacancies to a future date. The provisions have not been followed in the instant case as by diversion of the vacancies from the P.As cadre to the Investigators cadre, these were filled up. An infraction of the relevant rules is clearly evident. The vacancies which arose in the relevant years could not have been filled from the Investigators. The question is whether these appointments came to be challenged by the P.As. The action of the ITPO in filling up fresh vacancies which arose in year 1995 by promotion of P.As alone is also not sustainable. It is notable here that in terms of the pronouncement of the Hon'ble Supreme Court of India in case cited as Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, , vacancies are required to be filled in terms of the provisions of the rules existing on the dates of vacancies. In the present case, the rules which existed on the relevant dates were inoperable on account of the non-availability of officers in the feeder grade.

9. Needless to state, the opinion is against the petitioner.

10. Regretfully, probably due to docket explosion in this Court, WP(C) No. 2265/1995 could not be decided till the year 2011 when a notification was issued under the Administrative Tribunals Act requiring service disputes between ITPO and its employees to be adjudicated upon by the Central Administrative Tribunal and thus WP(C) No. 2265/1995 was transferred to the Central Administrative Tribunal where it was registered as TA No. 10/2011.

11. Dismissing the same the Tribunal held that 5 posts from the quota of direct recruits was transferred by the Department to be filled up in the promotion quota and thus 5 posts could not be treated as back-log vacancies. The Tribunal noted the provisions in the Recruitment Rules pertaining to vacancies not filled in accordance with the roster of < vacancies and opined upon the same as under:-

(1) The provisions of Rule XI provide that "vacancies which are not filled in accordance with the roster of vacancies will be carried forward for filling up in accordance with the recruitment rules on a future date."

(2) The provisions in Rule XV provide that "The Departmental Promotion Committee/Departmental Selection Committee is empowered to relax the requirement in specific cases on merit, provided that in case of educational qualifications such relaxation is considered only for posts up to and including the level of Senior Manager and not above."

12. The Tribunal opined that it was not permissible to fill up the vacancies by promotion since they did not fall in the promotee quota share. The Tribunal noted that due to Personal Assistants not being qualified having not rendered the requisite length of service, did not justify the quota vacancies in their share to be treated as back-log vacancies. The Tribunal held that the quota had to be worked out on the basis of vacancies which fell for consideration when the DPC met. Referring to the decision reported as State of Punjab and Others Vs. Dr. R.N. Bhatnagar and Another, , the Tribunal held that it was clear that the quota rule would apply to the vacancies and recruitment had to be made keeping in view the vacancies available to the two sources according to the quota. The result was that the interim stay granted by this Court on June 19, 1995 being vacated and as a result the writ petitioners faced reversion.

13. Instant writ petition came to be filed challenging the decision dated December 07, 2011 pronounced by the Tribunal. Ex-parte ad-interim stay was granted to the petitioners against their proposed reversion.

14. Learned counsel for the parties had relied upon the decisions of the Supreme Court reported as:-

(i) : 1995 (2) SCC 745 R.K. Sabharwal & Ors. v. State of Punjab & Ors.

(ii) State of Punjab and Others Vs. Dr. R.N. Bhatnagar and Another, ,

and qua the latter, it was urged by learned senior counsel for the petitioners that the ratio thereof was wrongly culled out by the Tribunal.

15. In R.K. Sabharwal's case (supra), the issue for determination was how the roster indicating reserved points in connection with reservation of posts in a cadre to be filled by Scheduled Caste, Scheduled Tribe and Backward Class candidates should be operated. The court clarified that the word "post" means an appointment, job, office or employment as opposed to "Vacancy" which meant an unoccupied post or office. The plain meaning of the two expressions makes it clear that there must be a "post" in existence to enable the "vacancy" to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre and that the concept of "vacancy" had no relevance in operating the percentage of reservation. The court also opined that if the roster was permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained.

16. In R.N. Bhatnagar's case (supra), the question arose as to how the vacancy in the post of Professor of Ophthalmology was to be filled in on the retirement of one Dr. R. The relevant Rule, Rule 9(1)(d) of the Punjab Medical College Education Service Rules, 1978 provided for 75% posts by promotion from amongst Additional Professors, or if unavailable from Associate Professors or if unavailable from Assistant Professors and the remaining 25% posts by direct recruitment.

17. In said decision, firstly the Supreme Court distinguished the case on facts from that of R.K. Sabharwal holding that under the Recruitment Rule in question, it had nothing to do with reservation of posts in the cadre of professors since it did not envisage reservation for a specified category of persons but merely laid down a rule of recruitment from two different sources. The court observed that whenever in the cadre of Professors of Ophthalmology, vacancies arose for being filled in at any given point of time, the same would have to be filled in by operating the roster in such a way that available vacancies get filled up by allotting 75% of them to departmental promotees and 25% to direct recruits. The recruitment to fill up the vacancies as may be existing from time to time in the cadre, was controlled by the quota or percentage of posts earmarked for promotees as compared to direct recruits. For the working out of the Recruitment Rule envisaging appointments from two sources, the vacancies in the cadre had to be kept in view and not the posts themselves. As the percentage for recruitment of Professors from departmental candidates was 75% and 25% were reserved for direct recruits, the first three vacancies in the cadre would go to promotees and the fourth would go to a direct recruit. And this was how the roster points were to be worked out in order to regulate the recruitment from two sources.

18. Thus, it all depends upon the language of the applicable Recruitment Rules.

19. Rule XI(d) of the Recruitment Rules, which we find has been noted by the

Tribunal reads:-

Vacancies which are not filled in accordance with the roster of vacancies will be carried forward for filling up in accordance with the Recruitment Rules as on future date.

20. The Tribunal has noted the same, but has not noted the effect thereof. The said Rule was to apply to all vacancies which existed as on March 01, 1977 since the Rule came into force on said date and needless to state, vacancies which arose thereafter.

21. So clear is the language of the Rule that we are surprised at the debate. The plain and the clear language of Rule XI(d) mandates vacancies which are not filled in accordance with the roster of the vacancies to be carried forward and filled up in accordance with the Recruitment Rules as on the future date. Meaning thereby, that if a roster vacancy could not be filled up from within a given quota, it got carry forwarded to the next year to be filled up from within the given quota category.

22. Thus, there being excess promotion of Senior Investigators, far beyond their quota, and noting that roster vacancies falling in the quota of Personal Assistants were not to be filled up from Senior Investigators, the inevitable conclusion would be that Personal Assistants would be entitled to their quota vacancies with the carry forward Rule in tandem. Assuming that the department, to undo the wrong, diverted vacancies in the quota for direct recruitment, Senior Investigators could not make any grievance because they were not adversely affected.

23. That apart, with the passage of time, the dispute even otherwise would be resolved in favour of the petitioners for the reason the issue which arose in the year 1995 is being discussed by us today as if the situation is frozen. Learned counsel for ITPO conceded during arguments that in the interregnum many posts of Assistant Manager have fallen vacant and have been filled up. The petitioners would have earned promotions when said promotions were made. We are noting said fact not to rest or strength our reasoning thereon, but only by way of incidental information which we feel is relevant to be noted by us. Our decision rests on our reasoning in the preceding paragraphs.

24. The writ petition is accordingly allowed.

25. Order dated June 14, 1995 keeping in abeyance the promotion order of the petitioners is quashed. No costs.

CM No. 20200/2011

Since the writ petition stands disposed of, instant application seeking ad-interim relief till disposal of the writ petition stands disposed of as infructuous.