

(2001) 11 RAJ CK 0049

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 242 of 1998

State of Rajasthan and Another

APPELLANT

Vs

R.A.A.O. Association and Another

RESPONDENT

Date of Decision : 20-11-2001

Acts Referred:

Rajasthan Civil Services (Accounts Service) Rules, 1954 — Rule 6, 7, 9

Citation : (2002) 3 RLW 1774 : (2002) 4 WLN 357

Hon'ble Judges : Shiv Kumar Sharma, J;A.C. Goyal, J

Bench : Division Bench

Advocate : P.S. Asopa and Dinesh Yadav, S.M. Mehta, General, S.P. Sharma and P. Balvada, for the Appellant; Manish Bhandari and S.N. Kumawat, for the Respondent

Final Decision : Allowed

Judgement

Sharma, J.—All the four appeals impugn the order dated April 26, 1997 of the learned Single Judge whereby the writ petition of the respondent Rajasthan Assistant Accounts Officers Association (for short RAAO) was allowed and the appellant State of Rajasthan was directed to convene the review D.P.C. for determining the yearwise vacancies which had fallen one in the Rajasthan Accounts Service in the quota of direct recruits as well as promotes for the period 1992-93 and onwards.

2. The RAAO submitted a writ petition before the Single Bench of this Court with the prayer that the State of Rajasthan be directed to strictly adhere to the proportion in between the direct recruits and promotees prescribed by the Rajasthan Civil Services (Accounts Service) Rules, 1954 (for short the 1954 Rules) and the vacancies of the year 1992-93 be apportioned in the ratio prevailing at that time keeping in view from junior scale to supertime scale, the State further to directed not to make direct recruitment in Rajasthan Accounts Service and to withdraw the advertisement for 54 posts already published in the news papers on Feb. 24, 1993 and three posts be filled from the promotees after

convening review DPC in order to cure the imbalance in the quota.

3. Before considering the rival submissions we deem it necessary to scan the scheme of 1954 Rules. Rule 6 provides that the strength of service and the nature of posts shall be such as may be notified by the Government from time to time. According to Rule 7 the recruitment by the competitive examination and promotion is to be made in the proportion of 50:50. Prior to January 4, 1993, the said proportion was 50:40 (DR:PR). An amendment was introduced in Rule 7(3) of 1954 Rules vide Notification dated November 13, 1996 thus-

"Recruitment to the service by the aforesaid method shall be made in such a manner that the persons appointed to the service by each method do not at any time exceed the percentage laid down in the Rules/Schedule of the total cadre strength as sanctioned for each category from time to time."

Rule 9(1)(a) provides for the determination of the actual number of vacancies occurring during the financial year on April 1 every year whereas Rule 9(1)(c) provides for the maintenance of proportion for the over all number of posts already filled in, in the matter of apportionment of vacancies determined under clause (a) of Rule 9(1).

4. It is canvassed by the learned counsel appearing for the appellants that the RAAO is trying to confuse the word "category" as if it means the category of "direct recruits" and "promotees" but that was never the intention of the Notification dated November 13, 1996. The word "category" denotes the various categories of the classes i.e. General, Scheduled Caste, Scheduled Tribe and other Backward Classes. It is the prerogative of the Government to create any number of cadres for the purpose of administrative convenience and therefore various cadres have been created in the Rajasthan Accounts Service. The post of Accounts Officer (ordinary scale) is the lowest post. The other cadres are-Senior Accounts Officer (Senior Scale), Chief Accounts Officer (Selection Scale) and Financial Advisor (Supertime scale). There are two channels of recruitment to the post of Accounts Officer (ordinary scale) i.e. through (i) direct recruitment and (ii) by promotion from the post of Assistant Accounts Officer. After a person is recruited/promoted to the post of Account Officer (ordinary Scale) his further promotion to the post of Senior Accounts Officer (Senior Scale), Chief Accounts officer (Selection Scale) and Financial Advisor (Supertime scale) shall be made either on the basis of seniority cum merit or purely on the basis of merit. Thus the proportion of 50:50 can only be maintained at the entry point i.e. at the time of direct recruitment/promotion to the post of Accounts Officer (ordinary scale). The contention of RAAO to maintain the proportion of 50:50 in all the cadres of Rajasthan Accounts Services is illegal. Reliance is placed on *Ramchandra Shankar Deodhan v. State of Maharashtra* (1), *Direct Recruit Class II Engineering Officers Association v. State of Maharashtra* (2) and *Dr. Chakradhar Paswan v. State of Bihar* (3).

5. Learned counsel appearing for the RAAO on the other hand supported the

judgment of the learned Single Judge and contended that non-determination of vacancies every year by the State Govt. and the violation of quota rule between the promotees and direct recruitees is apparent. Bare reading of 1954 Rules makes it clear that the entire Accounts Service has been taken as one and it may have number of posts in different pay scale. When the vacancies are determined for filling up the same in the initial grade or scale, the apportionment between the promotees and direct recruitees is to be made on the basis of strength of service and not of particular pay scale. The State Government is committing mistake in determining the quota meant for promotees and direct recruitees taking note of the vacancies of the junior scale and not of the "service." It is further urged that the Rajasthan Administrative Service and the Rajasthan Police Service having analogous provisions, are maintaining quotas between the promotees and direct recruitees after taking note of the strength of the entire service and the said method had been existing in both the services since its inception. Thus within the Government there exists two systems in regard to similar type of services, more so when the definition of the service as per provisions of Rules 7 and 9 makes it clear that the apportionment of vacancies between the two categories has to be done after taking note of the total posts of the service. Whenever a rule for providing quota is to be applied it has to be applied taking note of the strength of the post in service and not the vacancies.

6. Having given our anxious consideration to the rival submissions and on a careful scrutiny of material on record we find that the RAAO in the writ petition did not challenge the validity of 1954 Rules. In our opinion when there is no ambiguity in the 1954 Rules, it will not be proper to borrow the analogy of other service rules and we reject the arguments raised by the learned counsel for the RAAO on the basis of the RAS and RPS Service Rules.

7. Their Lordships of the Supreme Court had occasion to consider the term "cadre" in *Dr. Chakradhar Paswan v. State of Bihar* (supra), and it was indicated that-

".....In service jurisprudence the term "cadre" has a definite legal connotation. In the legal sense, the word "cadre" is not synonymous with "service". Fundamental Rule 9(4) defines the word "cadre" to mean the strength of a service or part of a service sanctioned as a separate unit. The post of the Director which is the highest post in the Directorate is carried on a higher grade or scale, while the posts of Deputy Directors are borne in a lower grade or scale and therefore constitute two distinct cadres or grades or grades. It is open to the Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency and it can not be said that the establishment of the Directorate constituted the formation of a joint cadre of the Director and the Deputy Directors because the posts are not interchangeable and the incumbents do not perform the same duties, carry the same responsibilities or draw the same pay. The conclusion is irresistible that the posts of the Director and those of the Deputy Directors constitute different

cadres of the service."

8. A close look at the scheme of 1954 Rules demonstrates that various cadres have been created in the Rajasthan Accounts Service. Lowest post is the post of Accounts Officer (Ordinary Scale). The other cadres includes Sr. Accounts Officer (Sr. Scale), Chief Accounts Officer (Selection Scale) and Financial Advisor (Super time scale). The post of Accounts Officer (ordinary scale) has two channels of recruitment-

(i) direct recruitment.

(ii) promotion from the post of Assistant Account Officer.

According to Rule 7 of 1954 Rules, recruitment by competitive examination and promotion is to be made in proportion of 50:50 (Prior to January 4, 1993, this proportion was 60:40 (DR :PR). As per amended Rule 7(3), recruitment has to be made in such a manner that the persons appointed to the service by each method do not at any time exceed the percentage of the total cadre strength as sanctioned for each category from time to time. Evidently the word "category" appears to have denoted "General", "Scheduled caste", "Scheduled tribe" and "O.B.C.". From the scrutiny of entire scheme of the 1954 Rules, it is revealed that after a person is recruited or promoted to the post of Accounts officer (ordinary scale), his further promotions to the posts of Sr. A.O. (Senior Scale), C.A.O. (Selection Scale) and F.A. (Supertime Scale) shall be made either on the basis of seniority cum merit or purely on the basis of merit. There is no provision in the 1954 Rules to maintain the proportion of 50:50 at the further promotional level. The proportion of 50:50 is to be maintained only at the entry point i.e. at the time of direct recruitment/promotion to the post of Accounts officer (ordinary Scale).

9. We are not impressed by this submission of the learned counsel for the RAAO that the proportion of 50:50 of the total posts in all the cadres of Rajasthan Accounts Service should be maintained. It was held by the Constitution Bench of the Hon"ble Supreme Court in *Ramchandra Shankar Deodhar v. State of Maharashtra* (supra) that Mamlatdars directly recruited or promoted are one class and there can be no discrimination between directly recruited Mamlatdars and promotes Mamlatdars in the matter of further promotion to the post of Deputy Collectors and it cannot be laid down in a rule that 50% of vacancies reserved for appointment by promotion shall be filled by directly recruited Mamlatdars having seven years of service.

10. Learned Single Judge while allowing the writ petition of the RAAO did not take into consideration that the posts of Senior Accounts Officer, Chief Accounts Officer and Financial Advisor are filled on 100% promotion basis and the 50:50 ratio is applicable only in the case of recruitment/promotion to the post of Accounts Officer (ordinary scale) and not in the entire Rajasthan Accounts Service. As a result of the review DPC for promotion of Assistant Accounts Officers to the post of Accounts Officers from 1992-93 onwards, the seniority of

the direct recruitment Accounts Officers will change upsetting the settled position. In our considered opinion the impugned order of the learned Single Judge is not sustainable and it deserves to be set aside.

11. Consequently, we allow all the four appeals and set aside the impugned order of the learned Single Judge. In the circumstances we make no order as to costs.