

Uoi Vs. Vijay Kumar and ors.

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Court : Delhi

Decided On : Nov-13-2013

Judge : S.Ravindra Bhat

Appellant : Uoi

Respondent : Vijay Kumar and ors.

Advocate for Def. : Ms. Anjali Jha Manish

Advocate for Pet/Ap. : Dr. Ashwini Bhardwaj

Judgement :

\$~16 * IN THE HIGH COURT OF DELHI AT NEW DELHI % DECIDED ON:

13. 11.2013 + W.P. (C) 13352/2005 Petitioner Through: Dr. Ashwini Bhardwaj, Advocate. UOI versus VIJAY KUMAR & ORS. Respondents Through: Ms. Anjali Jha Manish, Advocate for Resp-5. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE NAJMI WAZIRI MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT) 1. The Central Government (hereafter referred to as UOI) has preferred this proceeding under Article 226 of the Constitution of India claiming to be aggrieved by an order of the Central Administrative Tribunal (hereafter referred to as CAT) of 12.05.2005. By that order, the CAT directed the UOI to prepare a revised selection list in accordance with Rule 12 (2) of the Central Secretariat Service (CSS) Rules (hereafter referred to as the Rules) enforceable at the relevant time and consider the claims of the

respondents - hereafter referred to as the applicants - in accordance with law.

2. The applicants are members of the CSS, a group B service. All of them were recruited directly to the post of Section Officers W.P. (C)13352/2005 Page 1 (hereafter referred to as SOs) which has two sources of recruitment. The first 20% through the quota earmarked for direct recruitment and the balance 80% through promotion. Of the promotion quota, half (i.e. 40% of the entire cadre) is earmarked to be filled on the basis of seniority-cum-fitness and the other half, i.e., 40% is to be filled on the basis of the recruitment through limited departmental tests. The feeder grade for SOs - in the promotion channel - is from Assistants. In the limited departmental test, the promotion quota has been expanded to include the Assistants and Stenographers Grade C of Central Secretariat Stenographer Services (hereafter referred to CSSS) with eight years of service. The further promotion - from amongst the cadre of SOs - is to that of Under Secretary. At the relevant time, i.e., between 1978 and 1984, the concerned Rule, i.e., Rule 12 (2) provided as follows:

(2) Vacancies in Grade I shall be filled by promotion of permanent officers of the Section Officers Grade who have rendered not less than eight years approved service in that Grade and of permanent officers of the Grade A of the Central Secretariat Stenographers Service who have rendered not less than eight years ** approved service in that Grade and have worked as Section Officers for at least a period of two years in accordance with the proviso to rule 10 and are included in the Select List for Grade I of the Service prepared under sub-rule (4): Provided that an officer of the Grade A of the Central Secretariat Stenographers Service who has not worked as a Section Officer for the said period of two years shall also be considered for promotion to Grade I if he is otherwise eligible for such promotion and the W.P. (C)13352/2005 Page 2 Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs, for reasons to be recorded in writing, are satisfied that such a person was not appointed to the Section Officers Grade in the exigencies of service: Note:- Omitted.* Provided further that no person included in a later Select List shall be eligible to be appointed to the Grade until all officers included in an earlier Select List have been appointed: [Note omitted vide Notification No.8/20/75-CS(I) dated

14-7-77]. ** [vide DP&ARs Notification No.4/52/78-CS-I dated 27-11-78].

*Provided further that if any person appointed to the Section Officers Grade is considered for promotion to Grade I under this sub-rule, all persons senior to him in the Section Officers Grade, belonging to the Scheduled Castes and Scheduled Tribes, who have rendered not less than four years approved service in that Grade shall also be considered for promotion. Provided further that an officer of Grade B of the Central Secretariat Stenographers Service appointed to the Section Officers Grade against the Stenographers quota before the appointed day who ranks senior to any of the permanent Section Officers eligible to be considered for promotion to Grade I of the Central Secretariat Service under the third proviso shall also be eligible to be considered for such promotion notwithstanding that he may not have been substantively appointed to the Section Officers Grade. W.P. (C)13352/2005 Page 3 Note:- The provisions contained in the fourth proviso shall apply to the officers in Grade B (hereinafter grade A) of the Central Secretariat Stenographers Service appointed to the Section Officers Grade before the appointed day, who finally opt to continue in the Section Officers Grade after the coming into force of the Central Secretariat Stenographers Service Rules, 1969.

3. On 8.3.1999, the Rules were amended. By the CSS (2nd Amendment) Rules, the 3rd Proviso was omitted. The record bears testimony to the fact that considerable litigation as to the correct seniority position of various holders of posts had preceded the present litigation. As a consequence, the seniority lists and eligibility lists on the basis of which promotions were to be made was given effect to under Rule 12 - were repeatedly unsettled. These seniority lists were issued on various dates, i.e., those pertaining to the periods 1.7.1989 to 30.6.1990 (in the select list of the year 1989); for the period 1.7.1990 to 30.6.1991 (in the select list of the year 1990) and 1.7.1993 to 30.6.1994 and 1.7.1994 to 30.6.1995. In between the validity of the 1978 Rules was also called into question, culminating in the decision of the Supreme Court which upheld the amendment to the extent that it means the minimum eligibility criteria in respect of direct recruitment candidates for promotion to the post of Under Secretary (Refer R. Prabha Devi and Others v. Government of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms and Others, AIR 1988 SC902 4. The cause of action for the applicants to approach the Tribunal was that the Union

of India did not give effect to the then existing W.P. (C)13352/2005 Page 4 Rule 12 (2) which was enforced for the period between 1984 and 1999. All the applicants are SC/ST officers who were recruited to the post of SOs under the direct recruitment quota on various dates between 1984 and 1999. Their grievances before the Tribunal were that with the advent of the 1999 amendment - the effect of which was to omit the 3rd Proviso which enables SC/ST officers who were seniors to those officers under Rule 12 (2) - for consideration at the time when such juniors were promoted. The UOI's position was that the Rules at the time of framing the seniority lists, i.e., in 2000 and 2001 had to be taken into account rather than those which prevailed at the time when the vacancy arose. It was argued in addition that the UOI made a conscious choice of applying 1999 amendments to those vacancies which had occurred in the intervening period between 1984-1999. The Tribunal accepted the applicants' contention based upon the rulings of the Supreme Court reported as *Y.V. Rangaiah & Ors. v. J.*

Sreenivasa Rao & Ors (1983) 3 SCC284 Learned counsel for the UOI argues through its learned counsel Dr. Bhardwaj that the Tribunal fell into error in holding that the 1999 amendment in fact was a repeal of the 3rd Proviso to Rule 12(2) and that the Tribunal was bound to give effect to the law as it stood on the date the decision had to be rendered. He also submitted based upon the decision in *Dr. Ramulu and Another, etc. & Ors. v. Dr. S. Suryaprakash Rao and Others, JT1997(2) SC80* that no vested right could be said to have acquired to the respondents/applicants to insist that their cases for promotion had to be considered in accordance with the existing principle i.e. the 3rd Proviso to Rule 12 (2). Counsel also relied upon W.P. (C)13352/2005 Page 5 the decision in *Punjab National Bank v. R.L. Vaid & Ors, (2004) 7 SCC698* and submitted that the UOI took a conscious decision not to apply the principle of existing rules but rather to give effect to the amended rules. In support of the submission that the effect of the amendment was to repeal the 3rd Provision to Rule 12 (2), counsel relied upon *Gajraj Singh etc. v. The State Transport Appellate Tribunal & Ors. etc., AIR 1997 SC412* 5. Counsel for the respondents/applicants urged, on the other hand, that the impugned order is well reasoned and does not call for interference. She submitted that none of the lists prepared by the UOI and impugned before the Tribunal had in fact disclosed how the Proviso to Rule 12 (2) which was applicable

at the relevant time when the vacancies occurred was given effect to. It was submitted that there is no dispute about the fact that the vacancies that were filled by the juniors of the applicants - in terms of 3rd Proviso to Rule 12 (2) had to be filled in accordance with the Rules as existing then. That such lists had been prepared but called into question and consequently get embroiled into litigation was a fortuitous circumstance which ought not to have weighted by the Central Government by finalising the list even after 1999. The UOI was bound to give effect to the rules as they existed up to 1999 in respect of vacancies that occurred prior to that period. She submitted that not only Y.V. Rangaiah (supra) but the subsequent ruling of the Supreme Court in State of Rajasthan v. R. Dayal, 1997 (10) SCC419 also supported this case. She also submitted that what the UOI is in effect doing is giving retrospective effect to the 1999 amendment when the plain W.P. (C)13352/2005 Page 6 intendment was finalised. She relied upon Jawahar Singh @ Bhagat Ji v. State of GNCT of Delhi, 2009 (6) SCC490 to say that unless an amendment specifically provides that it would apply from the prior date, there is a presumption that the same would apply from the date of enactment or the date on which it is brought into force after its enactment. Likewise, learned counsel relied upon The Government of Andhra Pradesh and Ors. v. Ch. Gandhi, (2013) 5 SCC111 to say that there is a presumption against retrospective operation of the statute.

6. From the above narrative it is clear that the applicants grievance articulated before the Tribunal was that some of their juniors in the combined cadre of SOs were given promotions to the post of Under Secretary and that their claim which was to be considered with similar treatment on the basis of the 3rd Proviso to Rule 12 (2) had been overlooked. Rule 12 (2) as it existed in 1984 was brought into force w.e.f. 1.7.1985 through the Central Secretariat Service (2nd Amendment) Rules, 1984. This Court observes that Rule 12 (2) in the main part prescribes that vacancies in Grade I would be filled by promotion of (a) permanent officers of SO grade with not less than 8 years approved service in that grade; (b) a permanent officer of grade A, Central Secretariat Stenographer Service with not less than 8 years approved service. Both the categories of eligible officers should in addition have worked for at least 2 years as SOs and ought to have been included in the W.P. (C)13352/2005 Page 7 select list for grade I prepared under Sub Rule 4. The

first proviso carved an exception, thereby relieving the concerned officer of the requirement that he should have worked as a SO for two years if he was otherwise eligible for such promotion and the Central Government or the appropriate authority recorded reasons in writing that such service eligibility could not be fulfilled due to exigencies of service. The 3rd Provision which is crucial for the decision in this case stated as follows:

3. In rule 13 of the said rules,- (i) after sub-rule (1), the following provisos shall be inserted, namely:

Provided that the number of the vacancies to be filled by the substantive appointment of persons included in Select List for the Section Officers Grade in a recruitment year in a cadre, shall be proportionate to the vacancies reported by that cadre to the Department of Personnel and Administrative Reforms to be filled by direct recruitment for that year. Provided further that if sufficient number of candidates are not available for filling up the vacancies in a cadre in any year, either by direct recruitment or by appointment of persons included in the select list for Section Officers Grade, the unfilled vacancies shall be carried forward and added to the number of vacancies of the same mode of recruitment to be filled in the next year. Further, such unfilled vacancies shall also be carried forward for not more than two recruitment years, beyond the year to which the recruitment relates, whereafter the vacancies, if any, still remaining unfilled, belonging to one mode of recruitment, shall be transferred as additional vacancies for the other mode of recruitment; (ii) in sub-rule (2), for the first proviso, the following shall W.P. (C)13352/2005 Page 8 be substituted, namely:

Provided that if any person appointed to the Assistants Grade is considered for promotion to the Section Officers Grade in any cadre under this rule, all persons senior to him in the Assistants Grade in that cadre and belonging to the Scheduled Castes or the Scheduled Tribes who have rendered not less than four years approved service in that Grade shall also be considered for promotion.

7. It is evident that the basic eligibility was spelt out under Rule 12 (2) which also provided for the two channels or feeder cadres which could be considered for promotion to the post of Under Secretary. They were SOs and members of Group

A service of the Central Secretariat Stenographers Service. In both cases, the basic eligibility criteria was of 8 years approved service in the feeder grade plus 2 years working as a SO - the latter requirement could be waived for the reasons to be recorded in writing. The 3rd Proviso stated that if a junior was considered for promotion, an SC/ST candidate holding the post of SO and with 4 years approved service had to be considered along with the said junior and given the same benefit of promotion. The UOI's contention here is that since the Proviso was enacted in 1999, it stands relieved of the obligation to work out the 3rd Proviso to Rule 12 (2) for the intervening period when it was enforced, i.e. 1.7.1985 to 8.3.1999.

8. The Tribunal in the impugned order relied upon Y.V. Rangaiah's case. In that case, the Supreme Court had to deal with promotion to the post of Sub Registrar Gr.-II in the State of Andhra Pradesh. The plea of the State Government was that the subsequent W.P. (C)13352/2005 Page 9 development - after the occurrence of vacancies - relieved it from filling the vacancies in accordance with the pre-existing norms. The Court pertinently observed that vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. The Rangaiah (supra) principle finds affirmation in subsequent rulings also (P. Mahendran and Ors. v. State of Karnataka and Ors., (1990) 1 SCC411 N.T. Bevin Katti, etc. v. Karnataka Public Service Commission and others (1990) 3 SCC157 and P. Murugesan and Ors. v. State of Tamil Nadu and Ors. 1993 (2) SCC340 among others. It is, therefore, too late in the day for the UOI to contend that it is relieved of the obligation to apply the law or rules which existed as on the date when the event occurred, i.e., in the present case the vacancies which had to be filled. Equally, the argument that the respondents/applicants do not have any vested right to be considered for promotion does not impress this Court. What the applicants insist here is not that the Tribunal should have given a direction for promotion merely on the basis of their juniors being promoted. The action brought by them was premised upon strict adherence to 3rd Proviso to Rule 12 (2) which embodied a limited next below statutory principle, i.e., in the event of an officer being promoted under Rule 12 (2) had a senior who was a SC/ST officer, the latter had a right to be considered and given the same benefit. That such benefit was removed or repealed w.e.f. 8.3.1999 did not in any manner relieve the Central Government from the obligation to work out the benefit which had accrued to each

of the SC/ST officer for the intervening period that the rule was enforced i.e. 1.7.1985 to W.P. (C)13352/2005 Page 10 8.3.1999. Viewed from this perspective, the submission of the Central Government that the omission of the concerned Proviso amounted to a repeal obliterating the existing rights cannot be countenanced.

9. This Court had queried the counsel for the parties as to whether any officer likely to be affected was made a party to the proceedings or was made aware of the pendency of the present case. The Central Government had on 28.10.2011 given effect to the impugned order of CAT by issuing the corrected deemed dates of promotion and corresponding seniority position to the applicants. The said order also refers to the present case as well as another writ petition, i.e., W.P. (C) 13425/2005 filed by one Mr. Prabhakar, i.e., an unreserved category candidate who claimed to have been aggrieved by the order of CAT dated 30.11.2004 passed in OA9912003.

10. In view of this development, the Court is satisfied that all concerned parties likely to be affected were in fact notified about the present proceedings.

11. In view of the above discussion, the Court hereby is of the opinion that no infirmity can be found in the order of the CAT. The petition is accordingly dismissed. S. RAVINDRA BHAT (JUDGE) NAJMI WAZIRI (JUDGE)
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