

State of M.P. and others

Vs.

A.K.Rajoriya and Another

Civil Appeal Nos. 1875 with 1876 of 1992

(S.R. Pandian, P.B. Sawant, JJ)

28.04.1992

JUDGEMENT

SAWANT. J.

1. These two SLPs are directed against the judgment and order dated 4th May, 1990 of the Madhya Pradesh State Administrative Tribunal. Notices to the respondents in each of the SLPs were issued for final hearing. After service of the notices and completion of the pleadings, the SLPs have come up for hearing before us today. Leave is granted in both the SLPs.

2. The short question involved in these appeals is whether Rule 6 (2) of the Madhya Pradesh State Industries (Gazetted) Service Recruitment Rules, 1985 (hereinafter referred to as the "Rules") relates to the filling in of the vacancies by recruitment from direct recruits and promotees or to maintaining their proportion in the total strength of the cadre.

3. The relevant facts which have given rise to the aforesaid question in the present case are as follows:

"The appellants in Appeal No. 1875/ 1992 (arising out of SLP (C) No. 12998 of 1990) are the State Government, the Commissioner of Industries and Madhya Pradesh Public Service Commission while the respondents are the employees under the Directorate of Industries and at present holding the post of Assistant Directors-. In the companion appeal (arising out of SLP (C) No. 1807 of 1991), the appellants are the direct recruits to the post of Deputy Directors and the respondents, besides the State of Madhya Pradesh, the Commissioner of Industries and Madhya Pradesh Public Service Commission, are the Assistant Directors in service of the Directorate of Industries who are also the respondents in the accompanying appeal. Prior to the present Rules of recruitment, there were in operation the Madhya Pradesh State Industries (Gazetted) Service Recruitment Rules, 1965. These Rules among other things, provided that recruitment to the post of Deputy Director, (Industries) and to the post of Joint Director of Industries would be made 100% by promotion from the Assistant Directors of Industries and the Deputy Directors of Industries respectively. The present Rules, i.e., 1985 Rules made only one change, namely, that they provided that the number of employees transferred and promoted to the post of Deputy Director would not exceed 50% of the cadre strength, the remaining posts of Deputy Directors being filled in by direct recruitment. The position with regard to the promotion to the post of Joint Director of Industries from the posts of Deputy Directors remained unchanged. In other words, the seniority list of Deputy Directors

whether promoted, transferred or directly recruited' would remain common for the purpose of further promotion to the post of Joint Directors.

4. It is not disputed that initially there were 66 posts of Deputy Director of Industries in the Directorate of Industries. Nine of the said posts were later transferred to other departments and hence the strength of the cadre of Deputy Director of Industries in the Directorate of Industries was reduced to 57. It, however, appears that at the relevant time, 8 of the Deputy Directors from out of 57, were promoted to the post of Joint Director. Hence, only 49 posts of Deputy Director were Occupied by the incumbents when in August 1987 the Government issued an advertisement inviting applications from direct recruits for eight posts of Deputy Director. Pursuant to the advertisement, eight direct recruits were selected and appointed to ' the said posts.

5. About a year later, some of the Assistant Directors who are respondents in both the appeals, filed a writ petition in the High Court of Madhya Pradesh challenging the said appointments. The writ petition was subsequently transferred to the State Administrative Tribunal. It was contended on behalf of the petitioner-Assistant Directors that Rule 6 (2) of the Rules read with Schedule 11 to the Rules requires that whenever vacancies occur in the post of Deputy Director, they should be filled in 50% by promotions from the Assistant Directors and 50% by direct recruitment. Inasmuch as in the present case all the eight vacancies were filled in only by direct recruitment, the said Rule 6 (2) was breached and the Assistant Directors were denied their legal, right to the promotion to the post of Deputy Director. As against the said contention, it was contended on behalf of the State and some of the directly recruited Deputy Directors who are appellants in Appeal No.' 1876/ 1992 (arising out of SLP No. 1807 of 199 1) that Rule 6 (2) read with the Second Schedule requires that the strength of the cadre of Deputy Directors should at any point of time consist of not more than 50% promotees and the transferred employees. Since at the relevant date, out of 49 Deputy Directors, 28 were promotees and 21 were direct recruits, the Government had rightly recruited all eight recruits to conform to the provisions of the said Rule. It appears that when the matter was first heard by the Tribunal by a Bench consisting of the Chairman and an Administrative Member of the Tribunal, they differed on the interpretation of the said Rule and hence it was referred to the Judicial Member. The learned Judicial Member agreed with the Administrative Member and took the view that the Rule requires that 50% of the vacancies on every occasion should be filled in by direct recruits and promotees respectively. In that view, the Tribunal held that four of the said eight posts of Deputy Directors have to go to the Assistant Directors for being filled in by promotion. It is this order that is under challenge in both the appeals.

6. We are of the view that the impugned order of the Tribunal is unsustainable in law. The relevant provisions of Rule 6 are as follows :

"6. Methods of recruitment - (1) Recruitment to the service after the commencement of these rules shall be by the following methods, namely:-

(a) by direct recruitment by selection.

(b) by promotion.

(c) by transfer of persons who hold in a substantive capacity such posts in such services as may be specified in this behalf.

(2) The number of persons recruited under clause (b) or clause (c) of sub-rule (1)

shall not at any time exceed the percentage shown in Schedule 11 of the number of duty posts specified in Schedule 1.

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The relevant provisions of Schedule 11 referred to in Clause (2) of Rule 6 are as follows -

Percentage of the number of duty posts to be filled

Name of Department	Name of Service	Name of Posts	Total No. of duty posts	By Direct recruitment	Remarks
vide rule 6(a)	By promotion of substantive member of the service	vide rule 6(b)			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
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Commerce and Industry Deptt.	Madhya Pradesh State Industries Gazetted Service	Joint Director of Industries	6	Nil	100%	
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Deputy Director of Industries/General Manager/Development Officer	66	50%	50%			
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Although the heading of Rule 6 is 'Methods of Recruitment' and sub-clause (1) of the said Rule states that the recruitment to the service shall be by the following methods, viz. (a) by direct recruitment, (b) by promotion, and (c) by transfer, the language of sub-clause (2) of the said Rule is very clear. It states that at no time the number of those recruited by promotion or transfer, shall exceed the percentage shown in Schedule 11, of the number of "Duty Posts" specified in Schedule 1. Schedule 1 specifies 66 posts. As has been pointed out earlier, on account of the transfer of 9 of the said 66 posts, the duty posts which remained in the cadre were 57. Schedule 11 mentions that the percentage of the duty posts to be filled in by promotion would be fifty (per cent). Thus, neither Rule 6 (2) nor Schedule 11 refers to the vacancies to be filled in. On the other hand, they speak of the percentage of direct recruits and promotees to be maintained in the posts at any point of time. There is no ambiguity in the language either of subclause (2) of Rule 6 or of Schedule 11 referred to therein. On a plain reading of both the said provisions, it is clear that the Rule does not pertain to the filling in of vacancies when they occur but to the maintenance of the proportion between the direct recruits and promotees. The rule requires that the proportion between the two in the cadre or duty posts should be so maintained that at no time those recruited either by promotion or transfer exceed 50% of the duty posts or cadre strength.

7. Shri Sakesh Kumar appearing for the respondent-employees in both the appeals referred us to two decisions of this Court namely, *Bishan Sarup Gupta v. Union of India*, (1975) Suppl SCR 491 : (AIR 1972 SC 2627) and *Direct Recruit Class 11 Engineering Officers' Association v. State of Maharashtra*, (1990) 2 SCC 715 : (AIR 1990 SC 1607), and contended that the recruitment rule in the present case is similar to those involved in the said two cases, and the interpretation placed on the rule there, namely, that it referred to filling in of the vacancies and not to the maintenance of the proportion of direct recruits and promotees in the cadre should be accepted in the present case as well. The submission is misplaced. The language of the Rules in either of the case., was not similar to that of Rule 6 (2) in the present case. In *B. S. Gupta's case* (supra) what fell for consideration was Rule 4 of the Income-tax Officers Class 1, Grade 11 Service Recruitment Rules of 1945. The Court

held that the said Rule clearly referred to recruitment of candidates to 'vacancies in the service and the vacancies were such as the Government wanted to fill in whatever may be the actual number of vacancies. The Court also held that the said Rule entitled the promotees to 1/3rd of vacancies in any particular year whether or not there was recruitment to fill in the rest 2/3rd of the vacancies in that year. There was also no contention raised there that the said Rule related to the maintenance of the proportion between the direct recruits and promotees in the total cadre of the concerned officers. In Direct Recruit Class 11 Engineering Officers' Association case (supra) again on the language of Rule 1 of Bombay Service of Engineers (Class 1 and Class 11) Recruitment Rules, 1960, it was observed in para 20 of the judgment that the ratio of 75 : 25 for appointment by nomination and promotion was fixed for the purpose of appointment and not for the strength in the service as was suggested on behalf of the appellants in that case. It was also pointed out that the proviso to the said rule required that the said ratio in the appointment had to be maintained as far as practicable. Since the language of the Rule clearly referred to the ratio at the time of appointment and not to the proportion between the two to be maintained in the total number of posts as in our case, the said decision is also not applicable to the facts of the present case.

In the view we have taken, we set aside the impugned decision dated 4th May, 1990 of the Tribunal. The appeals are accordingly allowed. In the circumstances of the case, there will be no order as to costs.

Appeal allowed.

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