

**SUPREME COURT OF INDIA**

Union of India

Vs.

C.K. Dharagupta

C.A.No.16941 of 1996

(Kuldip Singh and S. Saghir Ahmad JJ.)

31.12.1996

**JUDGEMENT**

**KULDIP SINGH, J.:-**

1. Special leave granted.

2. The question for consideration before the Central Administration Tribunal (The Tribunal) was whether the Defence Research and Development Organisation (Junior Scientific Officer) Recruitment (Amendment) Rules, 1988 (1988 Rules) notified on March 14, 1988 and enforced with effect from March 8, 1980 have the effect of nullifying the judgment dated March 17, 1987 of the Tribunal in R. P. Joshi v. Union of India (A. No. 497/86).

3. The Tribunal answered the question in the negative and against the appellant. This appeal by the Union of India is against the judgment of the Tribunal dated December 20, 1991.

4. We have heard learned counsel for the parties. We are of the view that in the facts and circumstances of this case no fault can be found with the impugned judgment of the Tribunal. One R. P. Joshi in A. No. 497/86 had approached the Tribunal with the contention that the promotion of a Senior Scientific Assistant (SSI) to the cadre of Jr. Scientific Officer (JSO) could only be governed by the Defence Science Service Rules, 1967 (1967 Rules) and the Defence Research and Development Organisation Jr. Scientific Officers Recruitment Rules, 1980 (1980 Rules) had no application. Under the 1967 Rules the promotion was to be made on the basis of subject-wise seniority whereas under the 1980 Rules the basis was the general seniority. Joshi contended before the Tribunal that the 1967 Rules, having not been repealed by the 1980 Rules, the promotion from SSI to JSO could only be made under the 1967 Rules in accordance with subject-wise seniority. The Tribunal accepted the contention and issued the following directions :-

"In the circumstances we allow this application and direct the respondents 1 to 3 to re-do the process of promotion completed in August, 1984, in accordance with law subject-wise promotion as expeditiously as possible. The order effecting promotion on the basis of the recommendation of the DPC which met on 17th and 18th August, 1984 appearing in Annexure 'S' and 'U' are quashed. However, till a fresh process of promotion in accordance with rules of subject-wise promotion is completed persons already been promoted as JSOs need not be disturbed."

5. We have examined the judgment of the Tribunal in A. No. 497/86. Joshi was the only applicant before the Tribunal. In the judgment there is no reference to any other official except Joshi. We have no hesitation in holding that the Tribunal granted relief to Joshi alone and nobody else. The directions in the judgment (quoted above) though give an impression that it is applicable to whole of the cadre but when the judgment is read as a whole the impression is repelled. We confine the judgment to Joshi alone.

6. The 1988 Rules specifically repeal the 1967 Rules to the extent the 1980 Rules are applicable. Since the 1988 Rules were made operative retrospectively with effect from March 8, 1980, the Union of India declined to give benefit to Joshi of the judgment of the Tribunal in A. No. 497/86 dated March 17, 1987. This is how the present Application No. 1543/88 came to be heard and decided by the Tribunal.

7. V. S. Malimath, Chairman, speaking for the Bench, relying upon the judgments of this Court in P. S. Mahal v. Union of India, AIR 1984 SC 1291 and A. V. Nachane v. Union of India, AIR 1982 SC 1126, has come to the conclusion that the binding decision of the Tribunal dated March 17, 1987 in Joshi's case could not be rendered non-est by the 1988 Rules. The reasoning is as under:

"In the light of these binding decisions it is clear that the rule making authority cannot exercise

powers conferred on them under proviso to Article 309 of the Constitution retrospectively so as to nullify the binding decision of this Tribunal rendered in O. A. No. 497/86 directed the respondents to re-do the process of promotion completed in August, 1984 in accordance with the rule of subject-wise promotion by the impugned rule. The power is now taken to do away with the rule of subject-wise promotion with retrospective effect from 8th March, 1980. If the impugned rule is operated from 8th March, 1980 it is obvious that it would result in nullifying the effect of the judgment of this Tribunal. This is clearly impermissible in view of the law laid down by the Supreme Court which we have discussed above. Hence, we have no hesitation in taking the view that the respondents are bound to comply with the judgment of this Tribunal. This is clearly impermissible in view of the law laid down by the Supreme Court which we have discussed above. hence, we have no hesitation in taking the view that the respondents are bound to comply with the judgment of this Tribunal in O. A. No. 497/86 and to effect promotion to the cadre of JSOs from the cadre of SSAs applying the rule of subject-wise promotion till 17-3-1987 the judgment of this Tribunal. In other words the impugned rule would be enforceable only in regard to the promotions to be made to vacancies arising after 17-3-1987. Promotions till that date have to be made in accordance with the rule of subject-wise promotion".

8. We are of the view that in the facts and circumstances of this case, especially in the absence of a validating clause in the 1988 Rules, we are not inclined to interfere with the impugned judgment of the Tribunal.

9. We, however, clarify that in view of our finding that the judgment of the Tribunal dated March 17, 1987 in A. No. 497/86 gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C. K. Dharagupta (since retired) is seeking benefit of Joshi's case. In view of our finding that the benefit of the judgment of the Tribunal dated March 17, 1987 could only be given to Joshi and nobody else even Dharagupta is not entitled to any relief.

10. The appeal is disposed of. No costs.

Appeal dismissed.