

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
N.Y. APTE & ORS.

DATE OF JUDGMENT: 04/08/1998

BENCH:
SUJATA V. MANOHAR, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

SRINIVASAN, J.

The appellants are aggrieved by the judgment and order of the Central Administrative Tribunal, Principal Bench, New Delhi striking down the provisions of Indian Meteorological Service (Group A posts) Recruitment (amendment) Rules, 1983 (hereinafter referred to as "1983 Rules") and Indian meteorological Service (Group A posts) Recruitment Rules, 1978 (hereinafter referred to as "1978 Rules") to the extent indicated in the order at the instance of the respondents herein who joined the Department as meteorologists Gr. II in 1981-82. We are concerned in this case with the posts of meteorologists Gr. I, Meteorologists Gr. II and Assistant Meteorologists. For the sake of convenience we will refer to them as MG-I, MG-II and AM.

2. In January 1969, Indian Meteorological Department (Class I and Class II) posts Recruitment Rules, 1969 (hereinafter referred to as "1969 Rules") were framed under Article 309 of the constitution. The posts of MG-I and MG-II were Class I Gazetted posts whereas the post of AM was Class II gazetted post. All the three posts were selection posts. The post of MG-I was to be filled up by promotion of MG-II with three years approved service in the grade. The post of MG-II was to be filled up by promotion to the extent of 50% and the remaining 50% by direct recruitment. The promotion was to be from AM/Assistant Agricultural Meteorologist/Assistant Seismologist with three years approved service in the grade. The post of AM was to be filled up 50% by promotion and 50% by direct recruitment. The promotion in turn was from the post of Professional Assistant (including Foreman), Superintendent D.G.O's Office, Superintendent D.D.G.O's (climatology and Geophysics) office. The educational qualifications for all the three posts were the same, namely, Second Class M.Sc Degree in Physics, Statistics, Maths, Applied Physics and Geo Physics or Second Class M.S.C. degree in Agriculture. As regards the post of AM the knowledge of German, French or Russian as additional qualification was mentioned as desirable. The scale of pay for MG-II was Rs.400-40-800-50-950 whereas the scale of pay for AM was Rs. 350-25-500-30-

590-EB30-800-EB-30-830-35-900.

3. In October 1978, in partial supersession of 1969 Rules, the President made the 1978 Rules. Those rules related to MG-II and MG-I and higher posts. As we are not concerned with higher posts, we are not referring to the same. Both MG-I and MG-II were Group a Gazetted posts. The post of MG-II was to be filled up entirely by direct recruitment. The post of MG-I was to be filled up by promotion from the post of MG-II with five years approved service in the grade (excluding the period of training) or with 8 years combined service in the grades of MG-II and AM or AM with 10 years approved service in the grade. The selection was to be made in consultation with U.P.S.C. on each occasion. The educational qualification for both the posts was the same i.e. at least Second Class Master Degree in Science or Second class Degree in Engineering from a recognized University or equivalent. For the post of Mg-I an additional qualification of five years experience in a responsible capacity in the field was prescribed. Thus by the 1978 Rules the avenue of promotion for AM to the post of MG-II was closed. In lieu of that AM with ten years approved service in the grade and MG-II with 8 years combined approved service in the grades of MG-II and AM were included in the filed of consideration for promotion to the post of MG-I alongwith MG-II with five years approved service in the grade.

4. The respondents herein entered service as MG-II by direct recruitment in 1981/82 as per the 1978 Rules. In June 1983, the 1978 Rules were amended whereby the requirement of 10 years approved service in the grade of AM for being considered for promotion to the grade of MG-I was reduced by two years. Thus after the amendment of 1983 the post of MG-I can be filled by promotion of MG-II with five years approved service in the grade (excluding the period of training), or MG-II with 8 years combined approved service in the grade of MG-II and AM or AM with 8 years approved service in the grade. The note appended to the rule as amended was that the eligibility list for promotion shall be prepared with reference to the date of completion of the prescribed qualifying service in the respective grade/post.

5. Challenging the validity of the aforesaid amendment made in 1983 the respondents filed a writ petition in the High Court at Delhi seeking a declaration that the said rules were void and ultra vires the constitution and praying for a direction to the respondents therein to consider them for promotion to the post of MG-I before considering the case of MG-II who has worked earlier as AM and further to maintain their inter se seniority upon promotion. That writ petition was transferred to the Central Administrative Tribunal, Principal Bench, New Delhi after the constitution thereof. The Tribunal opined that by virtue of the amendment, the post of AM had been equated to the post of MG-II and thereby unequals were treated as equals. Hence the Tribunal struck down the said Rules as unconstitutional. Though there was no prayer in the writ petition with reference to the 1978 Rules, the Tribunal allowed the counsel for the respondents to make an oral request for striking down the relevant provision in the said Rules for the same reason. In the end, the Tribunal struck down the 1983 Rules and that portion of the 1978 Rules which provided for promotion to the post of MG-I. The tribunal issued certain consequential directions while making it clear that the promotions already made to the cadre of MG-I before the coming into force of the Notification of the 1983 Rules in accordance with 1978 Rules shall not be disturbed. It is

that order which is assailed before us now.

6. We have heard learned counsel on both sides and perused the records. We are unable to agree with the view expressed by the Tribunal that by the amended rules, unequals are treated as equals. Before setting out our reasons, it is necessary to point out that at the time when the respondents filed the writ petition before the High Court of Delhi they were not even in the zone of consideration for promotion to the post of MG-I in fact, the Tribunal has taken note of the same and observed that they have not earned eligibility for promotion to the cadre of MG-I as they did not have to their credit five years of approved service in the grade as on that date. Thus when the respondents approached the Court they could not even claim that they had a chance of promotion at that time. The writ petition ought not to have been entertained at their instance. In view of the passage of time, we do not propose to rest our conclusion on that aspect of the matter.

7. We have already pointed out that in 1978 when the 1969 Rules were partially superseded and the posts of MG-I and MG-II were bracketed with higher posts all of which were termed as Group A posts, the persons holding the posts of AM lost their chance of getting promoted to the post of MG-AII as the same was to be filled up entirely by direct recruitment though they had the requisite educational qualification. The only promotional avenue available to them under the 1969 Rules was closed. Necessarily, the rule-making authority had to make an alternative provision for such qualified persons with an avenue of promotion. Hence the 1978 Rules widened the field of consideration for promotion to the post of MG-I by including person who had put in long number of years of service either as AM exclusively or as MG-II and AM put together. It is obvious that the rule-making authority have credit to the experience gained by AM either as AM or as AM and MG-II for specified number of years. When the educational qualifications are same and the scales of pay are almost equal, there is nothing wrong in equating MG-II with five years approved service in the grade with MG-II with total of 8 years combined approved service in the grades of MG-II and AM as well as AM with 10 years approved service in the grade. The mere fact that on account of certain fortuitous or other circumstances a person with equal educational qualification entered the service in a lower grade will not keep him permanently inferior or unequal to a person who had entered a higher grade and prevent him from being placed on par with the latter after gaining sufficient experience in the service.

8. Further, what all has been done in the rules is only to include such persons in the field of consideration and give an opportunity to them to be considered for promotion. It should not be forgotten that such promotion is only by selection and that too by a Board consisting of high officials in consultation with UPSC on each occasion. In such a situation there is no warrant for the contention of the respondents that they have been deprived of any right. It is too well settled that chance of promotion is not a right, nor a condition of service.

9. There is no merit in the contention that thereby unequals have been made equals. A person holding the post of MG-II for five years cannot claim that a person holding the post of MG-II and AM on a combined service of 8 years is not equal to him; nor can it be said that the person holding the post of AM for ten years is not equal to either of them. The matter of equation of posts is entirely within the domain of

the rule-making authority and unless the rule is wholly unreasonable and irrational, the Court will not interfere with the same.

10. There is no basis for the fear expressed by the respondents before the Tribunal that juniors to them in the cadre of MGG-II who had served earlier as AM in the lower cadre would go above them and be considered for promotion as MG-I in preference to themselves. There is a fallacy in the argument. In the 1978 Rules a person holding the post of MG-II as a direct recruit becomes eligible for promotion to the post of MG-I only after completing five years approved service in the grade. From 1978 there could be no promotion whatever to the post of MG-II. Hence, whoever entered the cadre of MG-II by promotion could have done so only prior to 1978. Whoever was thus in service as MG-II at the time when the respondents entered service as MG-II was undoubtedly senior to the respondents.

11. With reference to the amendment brought in 1983, it is obvious that the same was introduced on the footing that a person holding the post of AM with 8 years approved service in the grade could be equated to a person in combined service of 8 years in the posts of MG-II and AM. There is no difference in the educational qualification and the scales of pay are almost equal. If the rule-making authority has thought it fit to equate those posts on the basis of longer experience in the lower post, we do not find any justification to interfere with the same. The respondents are not in a position to satisfy us that MG-II with five years approved service is superior to MG-II with eight years combined service in the posts of MG-II and AM or AM with eight years approved service in the grade.

12. The respondents have placed before us the rules made in 1982 regulating the method of recruitment to Grade 8 posts of AM. Recruitment for that post from 1982 is by promotion only. The feeder category is that of Professional Assistant including Professional Assistant (Foreman) with three years regular service in the grade and possessing at least bachelor Degree in Science or Diploma in Engineering from a recognized University/Institution or equivalent or should have successfully completed intermediate training in Meteorology conducted by India Meteorological Department. The respondents placed reliance on those rules for the purpose of contending that the essential qualification of at least Second Class M.S.C. Degree prescribed for the post of AM in the 1969 Rules had been done away with. Hence, according to them AM with longer experience cannot be equated to MG-II.

13. The fallacy in the argument of the respondents is apparent. The educational qualification for the post of MG-I as per the 1978 Rules are at least Second Class Master Degree in Science or Second Class Degree in Engineering from a recognized University or equivalent plus five years experience in a responsible capacity in the relevant field. Any person holding the post of MG-II with five years approved service in the grade or eight years combined service in the grades of MG-II and AM or AM with eight years approved service in the grade will be considered for promotion to the post of MG-I only if such person fulfils the essential qualifications prescribed for that post. Hence, there is no substance in the contention that a person holding the post of AM having been promoted thereto from the post of Professional Assistant with lesser educational qualification would be equated to those having the essential qualifications requisite for the post of MGII.

14. Looking at the matter from any angle, we do not find

any illegality or unconstitutionality in the 1978 Rules or the 1983 Rules. consequently, the appeal is allowed and the judgment of the Tribunal dated 20.2.92 in T.A. No. 16/90 is hereby set aside. The said T.A. No. 16/90 stands dismissed.

JUDIS