

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of decision: July 16, 2013*

+ **W.P.(C) 5451/2012**

RANJIT SINGH BISHT AND ORS. .... Petitioners

Represented by: Mr.M.K.Bhardwaj, Advocate

versus

UNION OF INDIA AND ORS. .... Respondents

Represented by: Mr.B.V.Niren, Advocate with  
Mr.Prason Jain, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR. JUSTICE V.KAMESWAR RAO**

**V.KAMESWAR RAO, J. (Oral)**

1. The challenge in writ petition is to the order dated November 03, 2011 in Original Application No.4384/2010. The Original Application was filed by the petitioners herein challenging the Recruitment Rules known as SSB (Secretarial) Service, 2006 and enforced vide notification dated November 20, 2006 for Group-B (Gazetted and Non Gazetted) Ministerial posts.

2. It is the case of the petitioners that a specialized outfit known as Special Services Bureau was formed to defend the territorial integrity of

borders of the country with active involvement of border population. This unit was under the control of Director General of Security (DGS) of the Cabinet Secretariat. The administrative control of SSB was transferred from Cabinet Secretariat to Ministry of Home Affairs in the year 2001. The Director General of Security used to comprise of four organizations viz Aviation Research Centre (ARC), Special Frontier Force (SFF), Chief Inspector of Armaments and Special Service Bureau. The services of the incumbents working in these organizations were inter-changeable. The Civilian Ministerial Cadre of DGS (Secretariat) Service was being governed by statutory rules framed in the year 1975 (Rules of 1975).

3. In the said rules a UDC having five years of service was eligible to be considered for promotion to the post of Assistant; besides 25% post of Assistant were to be filled up by LDCE from UDCs.

4. On transfer of the administrative control of SSB from Cabinet Secretariat to Home Affairs in the year 2001, the DGS (Secretariat) Service was trifurcated into SSB, ARC and SFF Secretariat Service with effect from August 23, 2001. The trifurcation of the service was made on '*as is where is basis*'. This action of the respondent was challenged in Original Application No.513/2002 by one Sh.S.K.Nayak holding that the options should have been called for which plea was accepted by the Tribunal. The judgment of the Tribunal was upheld by this Court in Writ Petition (Civil) No.3000/2003 decided on November 06, 2003. We have been informed during the submissions that the Special Leave Petition filed before the Supreme Court has been allowed in favour of Union of India. In any case we are of the view that the issue and the conclusion reached in that particular case has no bearing in so far as this case is concerned.

5. The petitioners further state that the respondents have enforced new Rules vide notification dated November 20, 2006 (Rules of 2006) for Group-B (Gazetted and Non Gazetted) Services in supersession of the Rules of 1975.

6. The challenge of the petitioners to the Rules of 2006 before the Tribunal has been on two grounds. The first one being that the Rules of 1975 have not been repealed and that being so, the Rules of 2006 could not be brought about. The second ground is while amending/superseding the earlier Rules of 1975, the guidelines issued by the DoP&T vide O.M dated December 31, 2010 have not been followed. The Tribunal while dealing with the aforesaid submissions made on behalf of the petitioner has held as under:

5. *“-----There is no merit whatsoever in either of the contentions of the learned counsel representing the applicants, as noted above. Present is not a case as was in OA No.2104/2009 in the matter of Bakhtawar Singh & others v Union of India & other, decided on 05.01.2010, where the statutory rules had been rescinded by an administrative order. In that context, of course, we have held that if the statutory rules have to be rescinded, the same procedure is required to be gone into which was adopted while framing the rules, and that the statutory rules cannot be set at naught by administrative orders. Present is a case where the Rules of 2006 have come into being by virtue of proviso to in Article 309 of the Constitution. The Rules of 2006, the very reading of the same would suggest, came into existence in exercise of the powers conferred by proviso to Article 309, in supersession of the Rules of 1975. The Rules of 1975 have been superseded and the new set of Rules of 2006 has come into being by virtue of the*

*proviso to Article 309. In the facts as mentioned above, there would be no merit whatsoever in the first contention of the learned counsel representing the applicants, as noted above.*

6. *The second contention of the learned counsel representing the applicant based upon DOP&T guidelines dated 31.12.2010 is equally devoid of any merit. Reliance of the learned counsel is upon the general guidelines regarding framing/amendment/relaxation of recruitment rules. Para 3.1.3 of the guidelines aforesaid is said to be relevant by the counsel. The same reads as follows:*

*3.1.3. Where the eligibility service for promotion prescribed in the existing rules is being enhanced (to be in conformity with the guidelines issued by this Department) and the change is likely to affect adversely some persons holding the feeder grade posts on regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules, could be included in the revised rules.*

*If read without reference and context in which para 3.1.3 came into being, the counsel for applicants may be right, but para 3.1.3 is preceded by para 3.1.1 with the caption 'Initial Constitution'. Para 3.1.1 reads as follows:*

- 3.1.1. In cases where a new service is formed and the Recruitment Rules are framed for the first time and that there are*

*officers already holding different categories of posts proposed to be included in the service on a regular/long term basis, a suitable 'Initial Constitution' Clause may be inserted in the Notification so as to count the regular service rendered by such officers before the date of notification of the Rules.*

*Para 3.1.3 reproduced above would be applicable, in our considered view, only when a new service is formed and the recruitment rules are framed for the first time, and there are officers already holding different categories of posts proposed to be included in the service on a regular/long term basis. Para 3.1.3 would not be applicable where a service is already in existence, and it is not a case of framing new service rules. Present, as mentioned above, is a case of superseding earlier rules and replacing them by a new set of rules under proviso to Article 309 of the Constitution, i.e., the Rules of 2006.*

7. *Providing eligibility criteria for promotion as regards residency on a feeder post is a policy decision of the Government and in such policy decision, it is too well settled a proposition of law, that the tribunals and courts in their limited power of judicial review, would not interfere. Nothing, in any case, is stated as to how it will be impermissible or even inequitable to provide for residency period of ten years instead of five years, as was provided earlier. The respondents have given reasons for enhancing the eligibility criteria which is dependent upon the DOP&T*

*guidelines adverted to above. The same are not under challenge nor even there is a plea that there is no rationale behind the said guidelines.”*

7. Mr.M.K.Bhardwaj, learned counsel for the petitioners apart from reiterating the contentions raised by him before the Tribunal would also submit that the ministerial cadre is a dying cadre and if the Rules of 2006 holds the field then the petitioners who had been stagnating for a long time would not be getting promotion till 10 years. He would further submit that there is no justification for specifying 10 years of service in the Recruitment Rules in the year 2006 as earlier, after the 5<sup>th</sup> Central Pay Commission's recommendation despite the office memorandum dated May 25, 1998 wherein 10 years qualifying service for promotion from the grade of ₹4,000-6000 to ₹5,000-9000 was recommended, no changes were effected in the Rules of 1975. Further he heavily relied upon para 3.1.3 of the O.M dated December 31, 2010 which 'inter-alia, stipulates that in the eventuality the eligibility service for promotion prescribed in the existing rules is being enhanced and the change is likely to affect adversely some persons, a note to the effect that eligibility service shall continue to be the same for persons holding the feeder post on regular basis on the date of notification of the revised rules could be included in the revised rules.

8. In so far as the first submission of Mr.Bhardwaj is concerned, the respondent justify the residency period of 10 years for promotion of UDC to the rank of Assistant by stating that the same has been kept in accordance with the guidelines of DoP&T issued from time to time. According to them as per the revised guidelines of DoP&T dated March 24, 2009, amendment of Service Rules/Recruitment Rules is necessary as per

CCS (Revised Pay) Rules, 2008. The residency period from one grade pay to higher grade pay is stipulated in the guidelines. The residency period from grade of ₹2400-4200 is 10 years. That being a justification we do not see any reason to nullify the rules of 2006.

9. In so far as the second submission of Mr.Bhardwaj is concerned, if the O.M dated May 25, 1998 has not been implemented, the same has gone to the benefit of the petitioners inasmuch as the eligibility period under the old rules remained as 5 years and not 10 years despite instructions to make necessary changes with Recruitment Rules.

10. In so far as the submission of Mr.Bhardwaj that para No.3.1.3 of the O.M dated December 31,2010 would be attracted is misplaced. The Tribunal has dealt in detail para 3.1.3 and para 3.1.1. We hold that the Tribunal was correct in its conclusion. That apart the word ‘affect adversely’ would necessarily mean, that if before amendment/repeal of Rules a right has accrued in favour of an employee in that eventuality such right cannot be effected/taken away by subsequent amendment. It is not the case of the petitioners before the Tribunal nor before us that the petitioners have attained the eligibility under the old Rules of 1975 which is sought to be effected/taken away by the new Rules of 2006.

10. It is a settled law that the manner of framing of Rules is an executive function. The Court does not have any expertise to prescribe the eligibility conditions in a given Recruitment Rules. In that regard we refer to a judgment of this Court delivered on August 03, 2009 in W.P.(C)3120/2000 Ram Prakash vs. Union of India & Ors. wherein para No.6 of the judgment this Court has held as under:

*“As far as 3<sup>rd</sup> and 4<sup>th</sup> prayers are concerned it is not*

*clearly within the jurisdiction of the Tribunal or this Court to frame fresh Recruitment Rules and therefore these two prayers made by the petitioners cannot be granted.”*

11. We do not find any merit in the Writ Petition. The same is accordingly dismissed.

12. No costs.

**(V.KAMESWAR RAO)**  
**JUDGE**

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**JULY 16, 2013**  
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