



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

and

THE HONOURABLE MR.JUSTICE **N.SATHISH KUMAR**W.P.(MD) No.5625 of 2016(W.P.C.T. No.113 of 2009, High Court, Calcutta)

Sri.G.Venkatachalam

... Petitioner

-vs-

- 1.Union of India,
Service through the Secretary,
Ministry of Defence,
South Block, New Delhi - 110 011.
- 2.Chief Administrative Officer,
Office of Joint Secretary,
Ministry of Defense,
Nirman Bhavan,
New Delhi.
- 3.The Secretary,
DOPT, New Delhi.
- 4.The Secretary,
U.P.S.C. Shajahan Road,
New Delhi - 69.
- 5.The Registrar,
Central Administrative Tribunal,
Nizam Palace,
Kolkata.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, commanding the respondents to cancel the impugned order dated 18.07.2008 and RA/31/2008 order dated 12.11.2008 passed in O.A.No.481 of 2006 (G.Venkatachalam v. Union of India and others) shall not be quashed and/or set aside/modified and that the petitioner has the right to the post of Deputy Director and to issue a certiorari directing the respondents to certify and transmit all the relevant records relating to this case so that after perusal the same a conscionable justice may be done by setting aside the order impugned and to direct the respondents to disburse 2nd ACP the amount w.e.f. due date as represented.

For Petitioner

: Mr.G.Venkatachalam
(Party-in-Person)

For 1st Respondent

: Mrs.S.Srimathy

**ORDER**

(Order of the Court by **M.M.SUNDRESH, J.,**)

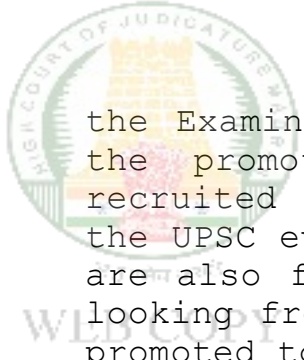
The petitioner herein was initially appointed as the Examiner - II. Thereafter, he was promoted as the Examiner - I. The initial appointment was on 09.01.1980. The petitioner reached the age of superannuation, after two promotions from the date of initial appointment, on 14.06.2014. In the year 2004, he made a representation inter-alia alleging that he should be treated on par with the Section Officer Post, which is a feeder category post of Deputy Director. As the representation made by the petitioner was rejected, he filed Original Application before the Central Administrative Tribunal, Calcutta with the following reliefs:

- "i) Direct all respondents to consider lateral induction/promotional avenue
- ii) Quash and set aside Armed Forces Headquarters Civil Service Rules 2001 particularly related to the recruitment of Deputy Director, Group A, pay scale 10000-10500/- of AFHQ Civil Services from the section Officers alone (The emphasis supplied).
- iii) Direct all the respondents to amend AFHQ Civil Services Rules, 2001 related to the recruitment of the Deputy Director.
- iv) Direct all the respondents to combine the Examiner-I cadre in a channel of promotion to the post of Deputy director of AFHQ Civil Services
- v) Direct the respondents to implement the rota & quota principle to Examiner cadre as followed by the Government of India for promotional purposes."

The Tribunal was pleased to dismiss the application filed regarding the interferal relief. The review petition filed by him has ended in his favour to the extent of directing the authorities to have a re-look with respect to pay scale alone. The petitioner filed the writ petition before the Calcutta High Court. Thereafter, he approached the Supreme Court for transfer the writ petition to this Court. Accordingly, the petition is allowed and the present writ petition is before this Court.

2.The petitioner appears in person and submits that the rules, namely, Armed Forces Headquarters Civil Services Rules, 2001 is unconstitutional being ultravires of fundamental rights guaranteed under Articles 14, 16, 16(1) and 21 of the Constitution of India. According to him, merely because the petitioner hails from a different cadre, he cannot be treated on par to the feeder category to the Section Officer to the cadre of Deputy Director. Therefore, he seeks quashment of the rules.

3.The learned Standing Counsel for the first respondent would submit that admittedly the cadre of Examiner, in which the petitioner was appointed is distinct and different. It is not the feeder category to the post of Deputy Director. The duties and responsibilities to the post of Examiner is different. The post of



the Examiner is a technical post, whereas the Deputy Director is the promotional post of Section Officers, who are directly recruited on the basis of Civil Service Examination conducted by the UPSC every year. Apart from this, the posts of Section Officer are also filled up by promotion from assistant grade. Therefore, looking from any perspective the petitioner is not entitled to be promoted to the post of Deputy Director.

4. We have considered the rival submissions and also perused the materials available on record.

5. We do not find any merit in the writ petition. The facts are not in dispute. The petitioner did belong to a separate category which has got its own duties and responsibilities. He was quite aware of the promotional avenues of the post of Examiner at the time of his entry. There is no vested right in promotion, but such a right can be exercised, provided the Rules permit. The contention of the petitioner cannot be construed to be a factor to challenge the Rules. It is not possible to amend the rules to suit the whims and fancies of the employee as held in *P.U. Joshi v. A.G. Ahmedabad* reported in 2003 (1) SCSJ 237, wherein it is held as under:

"Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State subject of course, to the limitations of restriction envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views from that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by underrating further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is not right in any employee of the State to claim that rules governing conditions of his service should be forever the



same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or extended at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and taking into force new rules relating to even an existing service."

A Rule can be challenged only limited grounds. Such a challenge can be with respect to the power and constitutional violations. Unfortunately, both the grounds are not available. Therefore, looking from any perspective, we do not find any merit in the writ petition.

6. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To:

1. The Secretary Government of India,
Ministry of Defence,
Union of India,
South Block, New Delhi - 110 011.

2. Chief Administrative Officer,
Office of Joint Secretary,
Ministry of Defense,
Nirman Bhavan, New Delhi.

3. The Secretary, DOPT, New Delhi.

4. The Secretary,
U.P.S.C. Shajahan Road,
New Delhi - 69.

5. The Registrar,
Central Administrative Tribunal,
Nizam Palace, Kolkata.

+1cc to M/S.S.M.S. Johnny Basha, Advocate SR.No. 67547

W.P. (MD) No.5625 of 2016

24.07.2017