

Dwarakanath B.S. and Others Vs State of Karnataka and Others

Court: Karnataka Administrative Tribunal

Date of Decision: July 15, 1987

Acts Referred: States Reorganisation Act, 1956 " Section 115(7)

Citation: (1987) 2 KarLJ 7

Hon'ble Judges: K. R. Chamayya, J.M.; R. A. Naik, Vice Chairman

Judgement

@JUDGMENTTAG-ORDER

Sri K.R. Chamayya, Member (Judicial)-The Applicants in these applications were formerly members of Karnataka Co-operative Services and,

when they were working as Senior Inspectors of Cooperative Societies/Senior Auditors, it was proposed to create a separate department known

as Audit Department. Applicants and others were asked to indicate their option to go to the proposed Audit Department. Applicants gave their

option which was accepted and they all became members of the Audit Department in the cadre of Auditors. Above the cadre of Auditors, there is

a category of posts known as Senior Auditors. Method of recruitment to that category of posts is as follows:

Category of post

1 Method of Recruitment

2 Minimum Qualification

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Senior Auditors 75 percent promotion from the cadre of Auditors. 1. Must have put in not less than 3 years of service in the cadre of Auditors. I

Dn. Clerks or Stenographers as the case may be; and

25 percent by promotion from the cadre of Head Clerks if no suitable Head Clerk is available for promotion, by promotion from the cadre of 1st

Division Clerks. Provided that every fiftieth vacancy shall be filled by promotion of a Stenographer.

2. In the case of Stenographers, Head Clerk of I.Dn. Clerk, he

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The categories of posts in the former composite Cooperation Department may be divided as Executive or Technical Wings, consisting of the

following categories of posts:

- i) Jr. Inspectors/Jr. Auditors.
- ii) Inspectors/Sr. Auditors/Co-op. Extension Officer.
- iii) District Auditor
- vi) Assistant Registrar

The other Wing known as Administrative Wing consisted of-

- i) Second Division Clerk
- ii) First Division Clerk
- iii) Head Clerk iv) Superintendent

In the new Audit Department the categories of posts are as follows:

Executive or Technical Wing: Administrative Wing:

- (1) Auditors
- (2) Senior Auditors
- (3) Asst. Chief Auditors
- (4) Deputy Chief Auditors
- (5) Chief Auditors (1) Second Division Clerks
- (2) First Division Clerks
- (3) Head Clerks
- (4) Superintendents
- (*) These posts, it is said, have been abolished.
- (*)

2. The Applicants have challenged the validity of the rules of recruitment for the posts of Senior Auditors on the ground that- i) posts of First

Division Clerks are inferior to posts of Auditors but an Auditor has to work as Auditor for three years to become eligible for promotion but a First

Division Clerk becomes eligible for promotion if he works as Auditor for one year thereby offending provisions of articles 14 & 16 of the

Constitution;

ii) ratio specified in the rules for the two sources have not been adhered to thereby denying equal treatment;

iii) for purpose of promotion to the cadre of Senior Auditors the categories of posts of Auditors and First Division Clerks which are not equals

have been treated as equal; and iv) the provision gives considerable benefit to the First Division Clerks at the cost of Auditors and persons

recruited as First Division Clerks get promotion much earlier than persons appointed as Auditors.

3. In support of their contention Advocates for the Applicants cited the following rulings of the Supreme Court:

(a) AIR 1972 SC 252 (S.M. Pandit v. State of Gujarat)

(b) AIR 1974 SC 259 (R.F. Deodhar v. State of Maharashtra)

(c) AIR 1977 SC 251 (L.K. Chavan v. State of Gujarat).

(d) AIR 1985 SC 774 (Karampal v. Union of India).

None of these decisions is relevant for our purpose. In the above said 1974 case, the Supreme Court (Constitution Bench) has stated as follows

while considering the legality of a provision in the rule which reduces the chances of promotion:

The petitioners and other allocated Tahsildars from Ex-Hyderabad State had, under the Notification of the Rajpramukh dated September 15,

1955, all the vacancies in the posts of Deputy Collector in the Ex-Hyderabad State available to them for promotion, but under the Rules of July

30, 1959, 50 per cent of the vacancies were to be filled by direct recruitment and only the remaining 50 per cent were available for promotion and

that too on divisional basis. This, according to the petitioners, constituted variation to their prejudice in the conditions of service applicable to them

immediately prior to the reorganisation of the States and since such variation was affected by the Rules of July 30, 1959 without obtaining the

previous approval of the Central Government as required under the proviso to Section 115, sub-section (7) of the States Reorganisation Act,

1956, the Rules of July 30, 1959 were invalid. This contention of the petitioners we find difficult to accept. All that happened as a result of making

promotions to the posts of Deputy Collectors division wise and limiting such promotions to 50 per cent of the total number of vacancies in the

posts of Deputy Collector was to reduce the chances of promotion available to the petitioners. It is now well settled by the decision of this Court in

State of Mysore v. G.B. Purohit that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A

rule which merely affects chances of promotion cannot be regarded as varying a condition of service. In Purohit's case the district wise seniority of

sanitary inspectors was change to State wise seniority, and as a result of this change the respondents went down in seniority and became very

junior. This, it was urged, affected their chances of promotion which were protected under the proviso to Section 115, sub-section (7). This

contention was negatived and Wanchoo, J., (as he then was), speaking on behalf of this Court observed: It is said on behalf of the respondents that

as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this

argument because chances of promotion are not conditions of service". It is, therefore, clear that neither the Rules of July 30, 1959, nor the

procedure for making promotion to the posts of Deputy Collector division wise varies the conditions of service of the petitioners to their

disadvantage. The proviso to Section 115, sub-section (7) is accordingly not attracted and the Rules of July 30, 1959 cannot be assailed as invalid

on ground of noncompliance with that proviso.

If the fear of the Applicants is that their chances of promotion are less than the chances of promotion of First Division Clerks that by itself will not

be a ground to invalidate the rules. While considering the validity of this very rules from another aspect, the High Court of Karnataka observed as

follows in Writ Petition No. 1363 of 1981 (Veerabhadraswamy v. State)

When this aspect was pointed out to the petitioners when the matter was argued on 18th March, 1982 next day the petitioners came forward with

an application in which they have tried to make out that their grievance was about the reservation of 25% of the posts for being filled up by

promotion from the category of 1st Division Clerk. The learned Counsel for the petitioners submitted that the minimum qualification for recruitment

to the post of First Dn. Clerk and Auditors was one and the same, there was no justification for providing a separate quota for First Division

Clerks.

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In my opinion, there is no substance even in the additional contention sought to be urged for the petitioners. It is for the rule making authority to

create cadres having due regard to the exigencies of public service. Therefore, it was competent for the rule making authority to create separate

cadres, i.e., one of Auditors and another of First Division Clerks. Similarly, it was competent for the rule making authority to prescribe the method

of recruitment for the posts of Senior Auditors and in doing so, it was also competent for the rule making authority to specify the quota for different

sources of recruitment. Actually, a higher quota viz. three times the quota reserved for First Division Clerks is earmarked for Auditors. While 75%

of the posts of Senior Auditors are reserved for being filled up from the category of Auditors only 25% of the posts are made available for

promotion from the category of of First Division Clerks. This has been done having due regard to the cadre strength of Auditors which is

approximately three times the number of posts in the cadre of First Division Clerks. Hence, I reject also the additional ground urged for the

petitioners.

We agree with the observations made therein. Similar view on the question of the powers of the State to prescribe methods of recruitment from

different sources and to specify definite quota for different sources has been accepted by the Supreme Court in AIR 1986 SC 638 (Narender

Chadha v. Union of India). The following observation therein may be seen:

it is now well-settled that it is permissible for the Government to recruit persons from different sources to constitute a service. It is also open to it

to prescribe a quota for each source. Rules of recruitment framed on the above lines are perfectly legitimate and quite consistent with Arts. 14 and

16 of the Constitution. It is also true that when the Rules of recruitment prescribe recruitment from different Services in accordance with the

specified quota the Government is bound to appoint persons to the Service concerned in accordance with the said Rules. The seniority of persons

recruited from different sources will have to be regulated accordingly.....

While specifying the sources it may not always be necessary that the posts in all the sources should be of same grade or rank It is for the State to

decide about this aspect from the administrative point of view. We may consider whether the decision is violative of any provisions of the

Constitution. The argument of the Advocate for the Applicants proceeds on the basis that posts of First Division Clerks and Auditors are not

similar. Pay scale wise they are identical. Function-wise they cannot be similar because one belongs to the executive wing and the other to the

ministerial wing. The Government has considered it necessary to provide some promotional opportunities for First Division Clerks and certain

percentage of posts of Senior Auditors have been set apart for them. Such a provision cannot be considered as bad unless it is possible to show

that XX it offends Article 16 of the Constitution. Having regard to total number of posts of Auditors and First Division Clerks, it cannot be said

that the quota fixed is defective in any manner. Providing promotional opportunities to different sources cannot be considered as violative of

provisions of Articles 14 and 16 of the Constitution on the ground that unequals are treated as equals for purposes of promotion.

4. Sri Goulay, Advocate for the Applicant, vehemently argued that making First Division Clerks who have worked as Auditors for a period of one

year only eligible for promotion as Senior Auditors even though Auditors should have worked for nor less then three years is discriminatory. While

considering this aspect, it should not be forgotten, that to become eligible for promotion, a First Division Clerk should have worked as First

Division Clerk for three years and one year as an Auditor, whereas in the case of an auditor, he must have worked as Auditor for three years. So

total service required to be put in by the First Division Clerk is four years whereas, it is three years in the case of an Auditor. Mr. Goulay tried to

impress that the nature of the work of an Auditor is much superior than that of a First Division Clerk. Such a comparison is not permissible

because they belong to different branches and cadres. We do not consider that making such a provision is violative of Article 16. In the case of a

First Division Clerk, he has been required to work for one year as Auditor so that he is not made to work as a Senior Auditor without any

experience. Considering all these aspects, we do not find any defect in the provisions made in the Rules of recruitment.

5. During arguments what we found was that the Auditors appears to have a feeling that the quota given to the First Division Clerks is excessive. If

they have any such feeling they are always free to approach the Government to consider their grievance and to make suitable modification.

6. For reasons stated above, we do not find any merits in these applications. Accordingly they are dismissed.

7. No costs.