A

UNION OF INDIA & ORS.

*v.*

SOMASUNDRAM VISWANATH & ORS.

SEPTEMBER 22, 1988

B [E.S. VENKATARAMIAH AND N.D. OJHA, JJ.]

*Civil Services: Government of India O.M. dated December 30, 1976—Procedure for making promotions and functioning of Departmental Promotion Committee—D.P.C.—One of the Members of Committee not present at the meeting of D.P.C.—Proceedings whether vitiated.*

C

*Constitution of India 1950—Articles 73, 162 and 309 Civil Services—Recruitment and promotion—Norms—Can be laid down either by law of appropriate Legislature or by statutory service rules—Conflict between executive instructions and rules—Rules prevail.*

D

**Somasundram Viswanath, Respondent No. 1 herein was working as an officer in the Defence Accounts Service. Promotions to Level I & Level II of the Senior Administrative Grade of the said Service were governed by the Indian Defence Accounts Service (Recruitment) Rules, 1958 (as amended from time to time) promulgated by the President of India** E **under the proviso to Art. 309 of the Constitution of India. Under the Rules, recruitments by promotion to the senior administrative posts were to be made by Selection on merit on the recommendations of a duly constituted Departmental Promotion Committee. In accordance with the said Rules, when the case of the Respondent came within the Zone of consideration for promotion to the cadre of Controller of** F **Defence Accounts, the same was placed before the Departmental Promotion Committee, and the said Committee in order to make appropriate recommendations convened its meeting on 7.8.1986. At the said meeting one of its members i.e. the Secretary to the Ministry of Defence could not be present even though he was duly notified about the date and time of the meeting. In his absence the remaining members met and** G **made the recommendation. The 1st Respondent was graded 'good' and was not put in the Select panel.**

**Aggrieved by the said decision Respondent filed a Petition before the Central Administrative Tribunal, Jabalpur Bench, challenging the validity of the recommendations made by the Department Promotion** H **Committee and prayed for an order directing the appellant-Union of**

India—not to promote his juniors to the higher grade. The principal contention raised by the Respondent before the Tribunal was that the Departmental Promotion Committee was not properly constituted, as one of its members, was absent with the result the proceedings of its meeting held on 7.8.1986 stood vitiated and recommendation made by it should not be acted upon. On the other hand the Deptt. contended that the proceedings of the Committee were protected by the administrative instructions issued by the Government of India with regard to the procedure to be followed by the D.P.C. In reply thereto the 1st Respondent pleaded that the administrative instructions issued by the Government of India could not override the rules made under the proviso to Art. 309 of the Constitution and the same has to be ignored.

On consideration of the rival contentions the Central Administrative Tribunal came to the conclusion that the D.P.C. had not been properly constituted at the meeting held on 7.8.1986 because of the absence of the Secretary to the Govt. of India, Ministry of Defence and therefore the proceedings of the said Committee were not valid. The Tribunal accordingly set aside the recommendations made by the Committee and directed that a fresh D.P.C. may be convened for reconsidering the agenda which was before the Departmental Committee on 7.8.86.

The Union of India being dissatisfied with the aforesaid order of the Tribunal appealed by special leave, to this Court.

Disposing of the appeal, the Court,

HELD: It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Art. 162 of the Constitution of India in the case of Civil Services under the State Governments. [152B]

If there is a conflict between the executive instructions and the rules made under the proviso to Article 309, the rules made under the proviso to Article 309 prevail, and if there is a conflict between the rules made under the proviso to Article 309 and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails. [152C]

A **The Office Memorandum dated 30.12.1976, is in the nature of complete code with regard to the topics dealt with by it. Unless there is anything in the Rules made under the proviso to Article 309 which is repugnant to the instructions contained in the Office Memorandum, the Office Memorandum which is apparently issued under Article 73 of the Constitution is entitled to be treated as valid and binding on all** B **concerned.** [153B-C]

**This Court does not agree with the decision of the Central Administrative Tribunal that in the instant case, the proceedings of the Departmental Promotion Committee on 7.8.1986 have been vitiated "solely on account of the reason that the Secretary, Ministry of Defence, one of its members was not present" at the meeting of** C **the Committee. The proceedings of the Departmental Promotion Committee at its meeting held on 7.8.1986 are not invalid on this account.** [153E]

**The decision of the Tribunal set aside, and the case remitted to the** D **Tribunal to dispose it of afresh.** [153G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3273 of 1988.

From the Judgment and Order dated 25.11.1987 of the Central E Adminstrative Tribunal, Jabalpur in Original Application No. 68 of 1986.

P. Parmeshwaran for the Appellants.

G.L. Sanghi, Ashok Singh and S.K. Agnihotri for the Respon- F dents.

The Judgment of the Court was delivered by

**VENKATARAMIAH, J.** The short question which arises for consideration in this case is whether by reason of the absence of one of G the members of a Departmental Promotion Committee at a meeting convened for the purpose of making recommendations regarding the promotion of officers to higher posts in the services under the Government of India the recommendations made by the Departmental Promotion Committee at the meeting would become invalid.

H The 1st respondent, Somasundaram Viswanath, was one of the

officers of the Indian Defence Accounts Service who came within the zone of consideration for promotion to the cadre of Controller of Defence Accounts. In order to make appropriate recommendations in that behalf the Departmental Promotion Committee convened its meeting on 7.8.1986. One of the members of the said Committee was the Secretary to the Government of India, Ministry of Defence. Even though he had been informed about the date and time of the meeting, he could not be present at the meeting and in his absence the remaining members of the Committee made recommendations. The 1st respondent was graded as 'good' and was not empanelled. Aggrieved by the decision of the Departmental Promotion Committee the 1st respondent filed a petition being Original Application No. 68 of 1986 before the Central Administrative Tribunal, Jabalpur Bench questioning the validity of the recommendations made by the Departmental Promotion Committee and praying for the issue of an order prohibiting the appellants from promoting his juniors to the higher cadre. In the course of his petition Respondent No. 1 raised many pleas, but it is not necessary for us to refer to all of them for the purpose of deciding the present case. One of the contentions urged by the 1st respondent, which requires to be considered is that the proceedings of the Departmental Promotion Committee at its meeting held on 7.8.1986 stood vitiated on account of the absence of the Secretary to the Government of India, Ministry of Defence, who was one of the members of the Committee. In reply to the above plea the appellants pleaded that the Secretary to the Government of India, Ministry of Defence was not present in the meeting due to the fact that he had to attend Parliament on that day and that the proceedings were protected by the departmental instructions issued by the Government of India with regard to the procedure to be followed by the Departmental Promotion Committees. In reply thereto the 1st respondent pleaded that the administrative instructions issued by the Government of India could not override the rules made under the proviso to Article 309 of the Constitution of India and had, therefore, to be ignored. The Central Administrative Tribunal, which heard the case, proceeded to set aside the recommendations made by the Departmental Promotion Committee on the main ground that the Committee had not been properly constituted at the meeting held on 7.8.1986 because of the absence of the Secretary to the Government of India, Ministry of Defence and, therefore, the proceedings of the Departmental Promotion Committee were not valid. The Tribunal directed that a fresh Departmental Promotion Committee may be convened for reconsidering the agenda which was before the Deparmental Promotion Committee on 7.8.1986. Aggrieved by the decision of the Tribunal, the appellants have filed this appeal by Special Leave.

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Promotions to the posts in Level-I and Level-II of the Senior Administrative Grade of the Indian Defence Accounts Service are governed by the Indian Defence Accounts Service (Recruitment) Rules, 1958 (as amended from time to time) (hereinafter referred to as 'the Rules') promulgated under the proviso to Article 309 of the Constitution of India by the President of India. Under the Rules recruitments by promotion to the administrative posts in the Indian Defence Accounts Service have to be made by selection on merit with due regard to the seniority on the recommendation of a duly constituted Departmental Promotion Committee. In Appendix II to the Rules the composition of the Departmental Promotion Committees for recommending eligible officers for promotion to the various grades of the Service has been set out. The Departmental Promotion Committee for purposes of promotion to Level-I and Level-II of the Senior Administrative Grade should consist of (i) the Chairman/ Member of the Union Public Service Commission as Chairman, (ii) the Secretary, Ministry of Defence, (iii) the Financial Adviser (Defence Services), and (iv) the Controller General of Defence Accounts as members. The Rules do not contain the details regarding the functions of the Departmental Promotion Committees, the procedure to be followed by them and the requisite quorum at the meetings of the Departmental Promotion Committees. These details had been laid down in a number of official memoranda issued by the Government of India from time to time in the form of departmental instructions prior to 30th December, 1976. The Government of India, however, issued an Office Memorandum bearing No. 22011/6/76-Estt(D) on 30.12.1976 consolidating all the prior administrative instructions governing the functioning of and the procedure to be followed by the Departmental Promotion Committees which were required to be constituted under the several rules of recruitment in force in the various departments of the Government of India. The preamble of the said Office Memorandum reads thus:

*"OFFICE MEMORANDUM*

Sub: Procedure for making promotions and functioning of the Departmental Promotion Committee.

* * * *

The undersigned is directed to state that the Ministry of Home Affairs (now the Department of Personnel and Administrative Reforms) have in the past issued various Office Memoranda on the subject relating to the constitution and functioning of the Departmental Promotion

Committees and the procedure to be followed in making promotions. With a view to making such instructions, issued from time to time, handy and available at one place, it has now been decided to consolidate all these instructions. Accordingly the following instructions are hereby issued on the subject for the guidance of all the Ministries/ Departments in the Government ....." A B

Paragraph VII of the said Office Memorandum, which deals with "the validity of the proceedings of Departmental Promotion Committees when one member is absent", reads thus:

"The proceedings of the Departmental Promotion Committee shall be legally valid and can be operated upon notwithstanding the absence of any of its members other than the Chairman provided that the member was duly invited but he absented himself for one reason or the other and there was no deliberate attempt to exclude him from the deliberation of the DPC and provided further that the majority of the members constituting the Departmental Promotion Committee are present in the meeting." C D

According to Paragraph VII of the Office Memorandum, extracted above, it is clear that the absence of any of the members of a Departmental Promotion Committee, other than the Chairman, would not vitiate the proceedings of the Departmental Promotion Committee provided that the member absent has been duly invited but he absented himself for some reason and that there was no deliberate attempt to exclude him from the deliberation of the Departmental Promotion Committee and that the majority of the members constituting the Departmental Promotion Committee are present in the meeting. In the instant case the only person who was absent at the meeting of the Departmental Promotion Committee was the Secretary to the Government of India, Ministry of Defence who could not attend the meeting because he had to be present in Parliament at the same time at which the Departmental Promotion Committee had to meet. The Chiarman of the Departmental Promotion Committee was present and the Chairman and the other members who were present constituted the majority of the Departmental Promotion Committee. It was urged on behalf of the 1st respondent that the Office Memorandum dated 30.12.1976 which contained the various administrative instructions regarding the procedure for making promotions and the functions of the Departmental Promotion Committees being merely in the nature E F G H

of administrative instructions could not override the Rules which had been promulgated under the proviso to Article 309 of the Constitution of India.

It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail, and if there is conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails. The question for consideration is whether in the instant case there is any conflict between the Rules and the Office Memorandum dated 30.12.1976, referred to above. We have already noticed that there are different rules framed under the proviso to Article 309 of the Constitution of India for making recruitments to services in the different departments and provisions have been made in them for the constitution of Departmental Promotion Committees for purposes of making recommendations with regard to promotions of officers from a lower cadre to a higher cadre. But these rules are to some extent skeletal in character. No provision has been made in any of them with regard to the procedure to be followed by the Departmental Promotion Committees and their various functions and also to the quorum of the Departmental Promotion Committees. These details which were necessary for the proper functioning of the Departmental Promotion Committees, as a matter of practice, were laid down prior to 30.12.1976 by the Government of India in the form of Office Memoranda issued from time to time and that on 30.12.1976 a consolidated Office Memorandum was issued containing instructions with regard to such details which were applicable to all Departmental Promotion Committees of the various Ministries/Departments in the Government of India. The said Office Memorandum deals with several topics, such as, functions of the Departmental Promotion Committees, frequency at which Departmental Promotion Committees should meet, matters to be put up for consideration by the Departmental Promotion Committees, the procedure to be observed by the Departmental Promotion Committees, the

procedure to be followed in the case of an officer under suspension whose conduct is under investigation or against whom disciplinary proceedings are initiated or about to be initiated, validity of the proceedings of the Departmental Promotion Committees when a member is absent, the need for consultation with the Union Public Service Commission, the procedure to be followed when the appointing authority does not agree with the recommendations of a Departmental Promotion Committee, implementation of the recommendations of the Departmental Promotion Committees, *ad hoc* promotions, period of validity of panels etc. etc. The Office Memorandum dated 30.12.1976, therefore, is in the nature of a complete code with regard to the topics dealt with by it. Unless there is anything in the Rules made under the proviso to Article 309 of the Constitution of India, which is repugnant to the instructions contained in the Office Memorandum, the Office Memorandum which is apparently issued under Article 73 of the Constitution of India is entitled to be treated as valid and binding on all concerned. In the instant case the Rules do not contain any of these details except indicating who are all the persons who constitute the Departmental Promotion Committee. We do not, therefore, find any repugnancy between the Rules and the Office Memorandum. In the circumstances we feel that the plea raised by the 1st respondent in his additional affidavit dated 13th May, 1988 (Page 132 of the Paper Book) that the Office Memorandum is ineffective cannot be upheld. We do not agree with the decision of the Central Administrative Tribunal that in the instant case the proceedings of the Departmental Promotion Committee on 7.8.1986 have been vitiated "solely on account of this reason viz., that Secretary, Ministry of Defence, one of its members was not present". We hold that the proceedings, of the Departmental Promotion Committee at its meeting held on 7.8.1986 are not invalid for the above reason.

We, therefore, reverse the aforesaid part of the decision of the Tribunal. The Tribunal has no doubt in the course of its order referred to certain other matters, but we feel that it proceeded to dispose of the case mainly on the ground that the proceedings of the Departmental Promotion Committee dated 7.8.1986 were vitiated on account of the absence of the Secretary to the Government of India, Ministry of Defence at that meeting. We notice that adequate attention has not been given to the other aspects of the case and according to us those aspects require fresh consideration at the hands of the Tribunal. We, therefore, set aside the decision of the Tribunal against which this appeal is filed and remand the case to it to dispose it of afresh in the light of the above observations. The Tribunal is requested to decide

A the case within three months from the date of receipt of a copy of this order.

The appeal is accordingly disposed of. There shall, however, be no order as to costs.

Y. Lal Appeal disposed of.