

GIB/MP/UNION OF/22-09-1988/SC-19

Supreme Court Category : Others

State : Madhya Pradesh

Order No.: GIB/MP/UNION OF/22-09-1988/SC-19

Name of Entry :

UNION OF INDIA & ORS. VS. SOMASUNDRAM VISWANATH & ORS.

Date : 22-09-1988

Breif Issue :

Facts & Issue of the case:

Somasundram Viswanath 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. 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.

When the case of the Respondent came within the Zone of consideration for promotion to the cadre of controller of 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.

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 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.

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.

Decision of Advance Ruling Authority :**Decision**

It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil 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.

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.

“Act will prevail over Rules, the Rules which is travels beyond the scope of Act cannot be given effect to”

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 or the Constitution is entitled to be treated as valid and binding on all concerned.

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 the Committee. The proceedings of the Departmental Promotion Committee at its meeting held on 7.8.1986 are not invalid on this account.

The decision of the Tribunal set aside and the case remitted to the Tribunal to dispose it of afresh.