

## **CDJ 1988 SC 109**

**Court :** Supreme Court of India

**Case No :** Civil Appeal No. 3273 of 1988

**Judges:** HON'BLE JUSTICE E. S. VENKATARAMIAH AND HON'BLE JUSTICE N. D. OJHA

**Parties :** Union of India and Others Versus Somasundaram Viswanath and Others

**Appearing Advocates :** For

**Date of Judgment :** 22-09-1988

**Head Note :-**

COMPARATIVE CITATIONS:

1989 (9) ATC 263, 1988 AIR(SC) 2255, 1988 (3) JT 724, 1989 LIC 1228, 1988 (5) SLR 174, 1988 (2) Scale 823, 1989 (1) SCC 175, 1988 (S3) SCR 146, 1989 SCC(L&S) 150, 1989 LabIC 1228

**Judgment :-**

VENKATARAMIAH,

J.

The short question which arise for consideration in this case is whether by reason of the absence of one of 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 that meeting would become invalid.

2. Respondent 1, 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 August 7, 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. Respondent 1 was graded as 'good' and was not empanelled. Aggrieved by the decision of the Departmental Promotion Committee respondent 1 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 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 respondent 1, which requires to be considered is that the proceedings of the Departmental Promotion Committee at its meeting held on August 7, 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 respondent 1 pleaded that the administrative instructions issued by the Government of India could not override the rules made under the provision 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 August 7, 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 Departmental Promotion Committee on August 7, 1986. Aggrieved by the decision of the Tribunal, the appellants have filed this appeal by special leave.

3. Promotions to the posts in Level I and Level II of the Senior Administrative Grade of the India 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 recruitment by promotion to the administrative posts in the Indian Defence Account 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 office memoranda issued by the Government of India from time to time in the form of departmental instructions prior to December 30, 1976. The Government of India, however, issued an Office Memorandum bearing No. 22011/6/76-Estt(D) on December 30, 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 not 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

4. 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.

5. 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 had 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 Chairman 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 respondent 1 that the Office Memorandum dated December 30, 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 of administrative instructions could not override the Rules which had been promulgated under the proviso to Article 309 of the Constitution of India.

6. 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 a 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 December 30, 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 recruitment to services in the different department 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 December 30, 1976 by the Government of India in the form of Office Memoranda issued from time to time and that on December 30, 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 office 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 Committee, ad hoc promotions, period of validity of panels etc. etc. The Office Memorandum dated December 30, 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 respondent 1 in his additional affidavit dated May 13, 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 August 7, 1986 have vitiated "solely on account of this reason vis., 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 August 7, 1986 are not invalid for the above reason.

7. 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 August 7, 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 the case within three months from the date of receipt of a copy of this order.

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

