

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2168/2002

New Delhi, this the 31st day of December, 2002

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman
Hon'ble Mr. Govindan S. Tampi, Member (A)

Shri R.K.Bansal ..Applicant
(By Advocates: S/Shri K.C.Mittal & Harvir Singh)

Versus

Union of India ...Respondent
(By Advocate: Shri K.C.D.Gangwani)

Corum:-

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman
Hon'ble Mr. Govindan S. Tampi, Member (A)

1. To be referred to the reporter or not? YES
2. Whether it needs to be circulated to
Benches of the Tribunal? NO

(Govindan S. Tampi)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO. 2168/2002

Tuesday, this the 31st day of December, 2002

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Mr. Govindan S. Tampi, Member (A)

R.K. Bansal
s/o Late Shri Misri Lal
r/o House No.15
Vivekanandpuri,
Delhi-7

..Applicant

(By Advocates: Shri K.C.Mittal & Shri Harvir Singh)

Versus

Union of India through
Secretary
Ministry of Food Processing Industries
Panchsheel Bhavan, New Delhi-49

..Respondent

(By Advocate: Shri K.C.D.Gangwani)

O R D E R (ORAL)

Hon'ble Mrs. Lakshmi Swaminathan:-

The applicant has filed this application impugning the validity of the action and the Office Memorandum dated 11.3.2002 issued by the respondents on the subject of filling up of the post of Director, Fruit and Vegetables Preservation (Director (F&VP) in the office of the respondents.

2. This case has a chequered history. The applicant had filed applications earlier before the Tribunal and the Hon'ble Supreme Court which were disposed of by orders dated 25.10.1995 in OA No.2547/94 which was heard together with another OA filed by one Shri A.K. Paliwal (OA-772/91). He had earlier filed OA-13/86 for a direction to amend the Recruitment Rules for the post of Director (F&VP) which was dismissed against which he filed CA-1172/87 before the Hon'ble Supreme Court.

Y/L

23

(2)

Against the order of the Tribunal dated 25.10.1995, the applicant filed SLP-10753/96 which was clubbed with CA-1172/87 and disposed of by the Hon'ble Supreme Court vide their lordship's order dated 27.1.1999. The relevant portion of the judgment of the Hon'ble Supreme Court reads as follows:-

"Mr. N.N. Goswamy, learned Senior Counsel appearing on behalf of the Union of India states that the 5th Pay Commission among other recommendations has made the following recommendations:

"The post of JD (C) carries the same qualifications as Director (F & VP), though with lesser experience. It is also filled by direct recruitment. It should be merged into the mainstream of F&VP cadre, redesignated as JD (F&VP), upgraded to the scale of pay of Rs. 3700-5000, and filled by promotion from DDS (V&VP) (Rs.3000-4500).

The post of Director should be upgraded to the level of Rs.4500-5700 and filled by the composite method of promotion/deputation (including short-term contract), the field of promotion being the JD (C)."

He further makes the following statement on the basis of the instructions received from the Ministry of Food Processing Industries, Government of India.

"The Ministry of Food Processing Industries has accepted the aforesaid recommendations of the 5th Pay Commission. The decision of the MFRI on the recommendations of the 5th Pay Commission is to be ratified by the concerned departments viz., Ministry of Finance, Department of Personnel & Training and the UPSC. Upon ratification of the decision of all concerned, the post of JD (C) will be merged into the main stream of the F&VP Cadre and redesignated as JD (F&VP) and upgraded to the scale of pay of Rs.3700-5000 (pre-revised). The incumbent of the post of JD (V&VP), irrespective of the person, will be eligible for consideration for promotion as Director (F & VP) subject to fulfilment of eligibility criteria."

18

24

(3)

In this view of the matter, learned counsel for the appellant does not press the appeal as also the Special Leave Petition. They are accordingly dismissed as withdrawn."

3. Shri K.C.D. Gangwani, learned senior counsel for respondents has also relied on the aforesaid judgment read with the recommendations of the 5th Pay Commission. It would be relevant to quote the relevant portion of the 5th Pay Commission report - paragraph 68.15 which reads as follows:-

"68.15.... The post of Joint Director (Consultancy) carries the same qualifications as Director (F&VP), though with lesser experience. It is also filled by direct recruitment. It should be merged into the mainstream of F&VP cadre, redesignated as Joint Director (F&VP), upgraded to the scale of pay of Rs.3700-5000, and filled by promotion from Deputy Directors (F&VP) (Rs.3000-4500). The Assistant Director (Consultancy) being an isolated post with Engineering qualifications and experience may be retained as a deputation post for any of the organised mechanical engineering services, instead of direct recruitment as at present. The post of Director should be upgraded to the level of Rs.4500-5700 and filled by the composite method of promotion/ deputation (including short-term contract), the field of promotion being the Joint Director (Consultancy)."

4. As noted in the judgment of the Tribunal dated 25.10.1995, the respondents had, by Notification dated 25.1.1991, appointed the applicant as Joint Director (Consultancy Service) to hold the current charge of the duties of the post of Director (F&VP) in addition to his own duties. He had also been granted powers to exercise statutory functions by this Notification. Thereafter, the applicant had also filed OA-2181/99 which was disposed of by order dated 25.1.2000 by which the

18

23

(4)

impugned order dated 4.10.1999 was quashed and set aside. The earlier order of the Tribunal dated 25.10.1995 in OA-2547/94 has also noted the order dated 25.1.1991 appointing the applicant on current charge duty to the post of Director (F&VP). It is not disputed that at present the applicant is working in the same post on current charge duty basis as Director (F&VP). A perusal of the earlier orders of this Tribunal dated 25.10.1995 and 25.1.2000 read with the orders of the Hon'ble High Court in CWP-580/2000 dated 29.5.2002 dismissing the Writ Petition filed by the respondents, therefore, show that the applicant has continued in the post of Director (F&VP) on current charge duty basis w.e.f. 25.1.1991.

5. The above facts have been briefly mentioned and culled out from the earlier judgments in order to understand better the circumstances in which the impugned Office Memorandum dated 11.3.2002 has been issued. Shri K.C. Mittal, learned counsel has submitted that in the light of the aforesaid judgments and particularly the order of the Hon'ble Supreme Court dated 27.1.1999, there was no justification for the respondents to issue the Office Memorandum instead of amending and notifying the Recruitment Rules for purposes of considering the case of the applicant for promotion to the post of Director (F&VP). On the other hand, Shri K.C.D. Gangwani, learned senior counsel has vehemently submitted that this Office Memorandum is nothing but the proposed draft/amended Recruitment Rules which are under active consideration with the concerned Departments/UPSC.

(5)

6. During the hearing ~~at~~ yesterday, learned senior counsel for respondents has submitted that the draft Recruitment Rules, as proposed to be amended, have been sent to the UPSC for their approval. He has also referred to the letter issued from UPSC dated 20.2.2002 in which the method and field of selection to be incorporated in the draft amended Recruitment Rules, as suggested by the UPSC, has been taken into account. He, therefore, submits that there is nothing wrong in the Office Memorandum which is based on the proposed draft Recruitment Rules. He relies on the judgments of the Hon'ble Supreme Court in Paluru Ramkrishnaiah & Others Versus Union of India & Another (JT 1989 (1) SC 595 and Vimal Kumari Versus State of Haryana & Others (JT 1998 (2) SC 111). It is also relevant to note that Shri K.C.Mittal, learned counsel has also referred to these judgements and has submitted that they are not fully applicable to the facts of this case for two reasons (i) that proposed draft Recruitment Rules can be relied only when there are no earlier rules existing^{ing} and notified under the proviso to Article 309 of the Constitution; and (ii) the specific undertakings given before the Hon'ble Apex Court by the respondents, quoted in paragraph 2 above, that the recommendations of the 5th Pay Commission are to be ratified by the concerned Departments and the post of Joint Director (Consultancy) to be brought into the mainstream of F&VP cadre.

7. Learned counsel for applicant has relied on the judgements of the Hon'ble Supreme Court, namely, State of Maharashtra Versus Chandrakant (AIR 1981 SC 1990) and

72

27

Paluru Ramkrishnaiah's case (supra). He has submitted that in terms of Paluru Ramkrishnaiah's case (supra), executive instructions cannot over^{ride} the provisions of Rules made under the proviso to Article 309 of the Constitution. He has submitted that the impugned Office Memorandum is nothing but an executive instruction which falls short ^{of} ~~the~~ ^{ar} statutory rules and which alone can amend the existing Recruitment Rules of 1971. He has further submitted that in the facts and circumstances of the case, the respondents cannot circumvent the aforesaid judgments of the Hon'ble Supreme Court and Tribunal and try to consider promotions to the post of Director (F&VP) by way of executive instructions, i.e., the Office Memorandum dated 11.3.2002 without amending the Recruitment Rules which have been notified under the proviso to Article 309.

8. During the hearing, the learned counsel for applicant has also submitted that he does not press reliefs in paragraph 8 (c) & (d) since they do not arise at this stage. In the circumstances, the preliminary objection taken by the learned senior counsel for respondents that there are multiple reliefs in the OA and, therefore, not maintainable under Rule 10 of the C.A.T. (Procedure) Rules, 1987 is rejected.

9. After careful consideration of the pleadings and the submissions made by the learned counsel for the parties, we find merit in this application for the following reasons.

18,

(7)

10. The impugned Office Memorandum dated 11.3.2002 is on the subject of filling up of the post of Director (F&VP) with the respondents. A perusal of the aforesaid judgments of the Hon'ble Supreme Court and the Tribunal shows that the issue in question regarding amending of the Recruitment Rules of 1971 and providing promotional avenues to the incumbent of the post of Joint Director (Consultancy), which the applicant substantively holds since 1980, has been under consideration on a number of occasions. It can also be fairly stated that the respondents, from their own submissions, are making attempts to amend the Recruitment Rules. As pointed out by the learned senior counsel for respondents, they are ~~being~~ consulting the concerned Departments and UPSC, who have been giving their advice from time to time, including the UPSC's advice contained in their letter dated 20.2.2002. However, it is also relevant to mention that they have themselves included a noting from the Department of Personnel & Training whom they have consulted; which is dated 14.1.2002 subsequent to the letter of the UPSC, that they do not agree with the proposed changes in the direct Recruitment Rules. Shri K.C.D.Gangwani, learned senior counsel had vehemently submitted that the Office Memorandum is nothing but the draft Recruitment Rules and, therefore, based on the judgments of the Hon'ble Supreme Court in Paluru Ramkrishnaiah and Vimal Kumari (supra), there was nothing wrong. However, in the present case, it is seen that the proposed draft rules have not attained finality as it appears that subsequently there is a re-thinking on the proposals, as seen from the note dated 14.8.2002 from the

JSC

(8)

concerned Department, which has been annexed by the respondents themselves in the reply affidavit filed on 18.9.2002. Therefore, in the facts and circumstances of the case, the judgments of the Hon'ble Supreme Court in Paluru Ramkrishnaiah and Vimal Kumari (supra) will not assist the respondents. Further, in the present case, the judgment of the Hon'ble Supreme Court dated 27.1.1999 dealing with the specific issues in this OA will have a definite bearing on the proposed amendments. In this view of the matter, we find merit in the submissions made by Shri K.C.Mittal, learned counsel that this is a case where the Department ought to have notified and issued the amended Recruitment Rules before proceeding with the selection process for promotion to the post of Director (F&VP). It would also be relevant to note that since the order of the Hon'ble Apex Court dated 27.1.1999, the respondents had also sufficient time to notify the rules, which, for some reason, has not been done so far. In the circumstances, the issuance of ^{the} impugned Office Memorandum dated 11.3.2002 cannot be sustained.

11. In the result, for the reasons given above, OA succeeds and is allowed with the following directions:-

The impugned Office Memorandum dated 11.3.2002 is quashed and set aside. The respondents should act in accordance with the aforesaid judgments and, in particular, the judgment of the Hon'ble Supreme Court in the matter.

No order as to costs.

(Govindan S. Tampi)
Member (A)

/s/

(Mrs. Lakshmi Swaminathan)
Vice Chairman (J)