

Central Administrative Tribunal, Principal Bench

Original Application No.1074 of 2002

New Delhi, this the 24th day of April, 2002

Hon'ble Mr.Justice Ashok Agarwal,Chairman
Hon'ble Mr.S.A.T.Rizvi,Member(A)

Shri Asit Baran Sarkar
S/o Shri Anadi Mohan Sarkar
aged about 47 years
Section Officer
Office of the Director General, S.S.B.,
Block V (East), R.K.Puram
New Delhi-66

- Applicant

(By Advocate: Shri Surinder Singh with Shri S.L.Lakhanpal)

Versus

1.Union of India
(Through the Secretary to the Govt. of India)
Ministry of Home Affairs,
Central Secretariat, North Block,
New Delhi-1

2.The Director General
S.S.B. (Special Service Bureau)
Ministry of Home Affairs,
Government of India
Block V (East), R.K.Puram,
New Delhi-66

- Respondents

O R D E R (ORAL)

By Hon'ble Mr.S.A.T.Rizvi, Member(A)

The applicant having served as Section Officer for 11-1/2 years, is eligible for consideration for promotion to the post of Assistant Director (Administration) (in short 'AD(A)'). He also happens to be the seniormost amongst the Section Officers. Two posts of AD(A) have been lying vacant from 1.5.2001 and 1.12.2001, respectively. Unless promotions to the aforesaid vacant posts are made expeditiously enough, the posts will lapse and stand abolished by virtue of Ministry of Finance's instructions on the subject. The applicant has made several representations requesting the respondents to hold DPC but no response is forthcoming.

2. Some Senior Personal Assistants (in short 'SPAs') since redesignated as Private Secretaries have been trying, according to the learned counsel, to upgrade their seniority from 16.7.92 to 1.1.86 and thereby claim promotion to the post of AD(A) by stealing a march over the applicant. The said SPAs can be given upgraded seniority on the basis of certain administrative instructions issued by the respondents which are contrary to the DGS (Secretarial) Service Rules, 1975. On the aforesaid issue, when consulted, the Ministry of Law have rendered the following advice:

"We have perused the opinion given by the DoP&T in the matter. Admittedly, the issue is covered by the Principal Bench O.A.No.2402 of 1995 decided on 1.7.1996 in the matter of Dr. M.S.Bahri vs. Union of India & ors. The promotions shall have to be made in accordance with the existing Recruitment Rules for otherwise also it is a settled principle of law that executive instructions cannot amend or supersede statutory rules by administrative instructions. The executive instructions may supplement but they cannot supplant the statutory rules. In view of this we advise that the existing Recruitment Rules may be followed so far as they relate to the proposed promotion."

The applicant's case is that having regard to the aforesated advice rendered by the Ministry of Law, there is no choice before the respondents but to hold DPC in accordance with the aforesaid rules which have already been applied in making selections for the posts of AD(A) on four different occasions from March, 1997 to January, 2001.

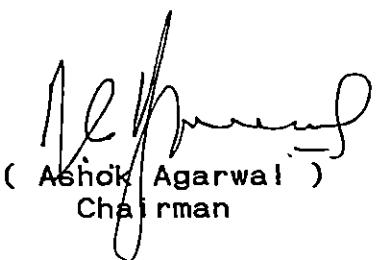
3. We have considered the submissions made by the learned counsel and have perused the representations filed, the latest of which is dated 2.4.2002 (Annexure A-3) and

find it in order and just to dispose of the present OA at this very stage even without issuing notices with a direction to the respondents to dispose of the aforesaid representations within a maximum period of two months from the date of receipt of a copy of this order. We direct accordingly. O.A. is disposed of in the aforesated terms.



(S.A.T. Rizvi)
Member(A)

/dkm/



(Ashok Agarwal)
Chairman