

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2655 of 2002

New Delhi, this the 1st day of August, 2003

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

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Shri Malkhan Singh
S/o Late Shri S.K. Singh
R/o WZ-429 A/C 45,
Naraina,
New Delhi-110 028.

....Applicant

(By Advocate: Shri George Paracken)

Versus

1. Union of India
Through its Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi-110 001.
2. Director,
Publication Division,
Ministry of Information and Broadcasting,
Patiala House Courts,
New Delhi-110 001.
3. Director,
Staff Inspection Unit,
M/o Finance,
Department of Expenditure,
5th Floor, Lok Nayak Bhawan,
New Delhi-110003. ..Respondents

(By Advocate: Shri R.N. Singh)

O R D E R (ORAL)

By Hon'ble Mr.Kuldip Singh, Member (Judl)

Applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 in order to seek direction to the respondents to upgrade his previous post of Sales Representative (hereinafter referred to as SR) in the pre-revised scale of Rs.1600-2660 (revised to Rs.5000-8000) to that of Marketing Representative (hereinafter referred to as MR) or its equivalent post of Business Executive (hereinafter referred to as BE) in the pre-revised scale of Rs.1640-2900 in accordance with the agreed report of SIU from 22.8.1994, i.e., the date of submission of the agreed report of the SIU.

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The applicant has also prayed for quashing of OM dated 12.2.2002 vide which his representation to this effect had been rejected.

The facts in brief are that the applicant was working as SR in the pay scale of Rs.1600-2600 under the Union of India in its Directorate of Publication Division attached to Ministry of Information and Broadcasting. There are many wings under the Publication Division like Editorial Wing, Production Wing, Business Wing etc. Similarly there are various publication units one for Employment News and other for Yojana Magazine.

The Staff Inspection Unit (SIU) under the Ministry of Finance undertook the work of measurement study of the Publication Division of the Ministry of I&B and submitted their report for Employment News Unit. According to the said report the existing post of SR/BE were converted to MR. In the existing set up there was one post of SR in the Advertising Unit in the pay scale of Rs.1600-2660 and one post of Business Executive in the scale of pay of Rs.1640-2900 in the circulation Unit of Employment News. The Publication Division is stated to have demanded two additional posts of SR and one post of BE so that the total number may become 3 SR and 2 BE respectively. However, the Publication Division finally agreed for 2 MR in the upgraded scale of Rs.1640-2900 against the demand for 3 SRs in the scale of Rs.1600-2660. Another 2 posts of MRs were also agreed in the scale of Rs.1640-2900 against the demand for 2 BEs who were in the same scale of Rs.1640-2900. Thus the agreed number of posts of the newly designated posts of



MRS has been fixed at 4 as against the existing post of one SR and one BE and against the demand for 3 SRs and 2 BEs.

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For implementing the above said report two more posts were to be filled up in the Employment News apart from the existing one post of SR and one post of BE respectively.

It is further submitted that the SIU submitted the final agreed report on 22.8.94 giving the total strength of Publication Division as a whole wherein out of sanctioned strength of 4 posts of BE, the Publication Division has agreed to retain 3 posts. In addition, they have agreed to create 4 new posts of MRS as stated in the first part of the report. Accordingly, 5 posts of SR in the Publication Division including the one post of Employment News, 3 posts have been abolished and only 2 posts have been allowed to be continued and finally there were 2 SRs, 3 BEs and 4 MRS.

However, the respondents after submission of the final report implemented the same by abolishing 32 ex-cadre posts in the Publication Division and all the 5 posts of SRs have been abolished without making the corresponding upgradations of the post of SR to that of MRS. Though the recommendation of the SIU was to retain 2 out of the 5 SRs and there were to be 4 MRS in the scale of pay of Rs.1640-2900.

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It is further submitted that according to the agreed report of the SIU out of existing 5 posts of SRs, 2 are continuing and 3 were to be upgraded to the post of MEs but the respondents instead of upgrading three posts of SRs to that of MRs in accordance with the report of the SIU abolished all the 5 posts of SRs without making the corresponding upgradation.

The applicant made a representation for implementation of the SIU report. The applicant was informed that his representation is under consideration of the Ministry of Information and Broadcasting. Thereafter nothing was heard and no further action was taken. The applicant made a detailed representation on 7.11.2000 whereas the respondents informed the applicant that SIU report of 1992 was just tentative whereas the 1994 report was final one and since the respondents did not take any favourable action so the applicant approached the Tribunal vide OA 599 of 2001 which was disposed of at the admission stage itself with a direction to the respondents to dispose of the representation of the applicant. But still the respondents did not implement the order of the Tribunal. CP was also filed. During the pendency of the said CP an order dated 22.8.2001 was passed conveying the sanction of the President for creation of 4 temporary posts of BE w.e.f. 27.9.99, i.e., the date from which 5 posts of SRs were abolished as per SIU's report.

The applicant further submits that since the SIU report was agreed to hence its implementation in toto was to be effected w.e.f. 22.8.94, i.e., the date of its

submission. However, the respondents arbitrarily took time to implement the abolition part till 27.9.99 and again took further time for creation of posts till 22.8.2001 though retrospectively w.e.f. 27.9.99. However, the respondents did not give the benefit of such creation of post to the applicant even from 27.9.99 when he was entitled for its benefit from 22.8.94. However, the respondents issued another order dated 30.8.2001 stating that the applicant along with another official have been promoted as BE in the pay scale of Rs.5500-9000 from the date when they assumed charge and applicant assumed charge on 30.8.2001 itself. The order of promotion was filed in reply to the CP and the respondents claimed that they had implemented the SIU report and CP was dropped but the same was absolutely wrong because nowhere in the order it was stated that it was issued in implementation of the SIU's report.

On the other hand the applicant was due for promotion for BE from June, 1988 in his own turn but the CP was disposed of on the basis of the statement of the learned counsel for the respondents.

The applicant thereafter again represented to the Ministry of Information and Broadcasting about the improper implementation of the SIU report and claimed for upgradation of his post of SR to that of BE w.e.f. 22.8.1994 and also asked for consequential benefits.

The applicant again filed OA 3270/2001. However, during the pendency of the OA the representation was disposed of vide impugned order dated 12.2.2002.

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Since the applicant has not challenged the order dated 12.2.2002 in the earlier OA so the earlier OA was dismissed with a liberty to challenge the order dated 12.2.2002.

So the applicant now assails order dated 12.2.2002 which is absolutely against the recommendations of the SIU agreed to by the Ministry of Information and Broadcasting because the creation/abolition of post are part of the same recommendation of the SIU as agreed to by the respondents and, therefore, the same has to be implemented simultaneously and since the post of SRs have been abolished and 4 posts of BEs were created on the recommendations of SIU in lieu of SRs so these posts should have been given to the applicant who has been working as SR.

The applicant further submit that he has been wrongly promoted on 29.8.2001 whereas he should have been promoted from an earlier date when the post of SRs were abolished and the applicant could not have been kept under suspended animation as he could not work on the post which had been abolished.

The respondents are contesting the OA. The respondents in their reply admit that SIU of Ministry of Finance had undertaken the work measurement study of Publications Division in 1990 and submitted its final report in 1994. It is agreed that SIU recommended the following strength:-



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S.No.	Designation of Scale of Pay	Sanctioned Strength	Agreed Strength
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1.	Bussiness Executive	4	3
2.	Marketing Representative	-	4
3.	Sales Representative	5	2".

It is further submitted that this report of SIU was considered and their acceptance in entirety would have besides creating another designation also necessitated the framing of Recruitment Rules and segregating the staff of Publications Division into two separate sets. Such restructuring would have created more administrative problems than giving a solution for proper man management. Such restructuring would also not have been commensurate with functional requirements of the Division. Hence, in overall interest of the personnel of the Division, especially on the business side it was decided to revise the strength. It was also agreed to by the SIU and according to them the strength of BE was increased to 8. No post for Marketing Representative was agreed and Sales Representative were 5.



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It is further submitted that the averment of the applicant that SIU has recommended conversion/upgradation of the post of SR to that of MR/BE is misleading. It is denied that SIU has recommended upgradation/conversion to that of BE into MR.

The 5 posts of SR were abolished vide order dated 27.9.99 notwithstanding that the Expenditure Reforms Commission has recommended the closure of the Publication Division, keeping interest of personnel borne on the strength of this Division in view, 4 posts of BE were created vide sanction dated 22.8.2001 and the DPC to consider promotion of eligible SR to the posts of BE met on 30.8.2001 and on the same day they were so promoted in accordance with the instructions contained in the DOP&I's OM dated 10.4.1989.

Though the applicant had submitted a representation dated 5.9.2001 but the main contention of the applicant was that he should have been promoted to the post of BE w.e.f. 22.8.94 but the same could not be done and the reply was duly forwarded on 12.2.2002.

It is further submitted that in case the SIU report had been implemented as it was received, three posts of SR and one post of BE would have been abolished. As a result 3 SRs and one BE would have been rendered surplus. Therefore, there was no scope for the promotion of the applicant or any other person to the post of BE on that date and the other aspect of the report is creation of 4 posts of Marketing Representatives which is an entirely new category of posts. This could have been



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filled up only after framing of Recruitment Rules as such the applicant could not escape from being declared surplus as a result of abolition of 3 posts of SRs could not claim appointment/promotion to the posts of Marketing Executives. as such the OA deserves to be dismissed.

Rejoinder to this was also filed.

We have heard the learned counsel for the parties and gone through the records of the case.

The learned counsel appearing for the applicant submitted that once the SIU had given a report particularly agreed report in the year 1994 which was mandatory on the part of the respondents to implement the same. In order to support his contention the learned counsel for the applicant has referred to an OM of the Government of India. Ministry of Finance dated 20.11.1980 which says that the status of the SIU report in accordance with the Ministry of Finance OM. the findings of the SIU contained in their final report are recorded as mandatory and the Ministry/Offices to implement them speedily.

Referring to the same memo the counsel for the applicant submitted that creation of additional posts as well as reduction of posts where SIU envisaged creation/reduction of posts and the same should be done simultaneously since the report is mandatory so the post should have been created and abolished simultaneously.



The counsel for the applicant further submitted that had the department acted on the agreed report which is mandatory then the applicant would have been promoted to the post of MR as reported back in the year 1994 which have been given to him much later.

As the counsel for the respondents submitted that though the final report has been submitted by the SIU team but the same was not acted upon as the proposal required restructuring and framing new Recruitment Rules which would have created more administrative problems so in consultation with the Ministry of Finance and as agreed to by the SIU itself, the counter-affidavit filed by the respondents to this effect also shows that the respondents had certain difficulties in implementing the final report of SIU as given in the year 1994 so after consulting the SIU itself the respondents had abolished the post of SRs and created the post of MR. The respondents also explained that had the report of the SIU as given in the year 1994 would have been implemented then the applicant would have been declared as surplus SR and it is in order to save the applicant being declared as surplus. This point was adopted in consultation with the SIU and the applicant was given promotion to the post of BE from the post of SR.

Thus from the reply it is clear that the contentions of the learned counsel for the applicant for implementing the SIU report as given in 1994 could not be implemented as there were certain administrative difficulties which have been duly explained in the counter-affidavit. Though the final report of the SIU is

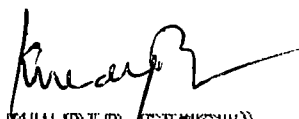
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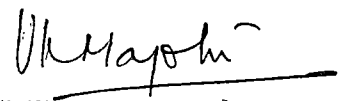
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mandatory but the respondents could not implement the same and they had again consulted SIU on this aspect and it is only after consulting the SIU and other concerned departments, the respondents changed the structure and abolished the post of SR and only thereafter could give promotion to the applicant to the post of BE.

So the implementation of the report as given in 1994 had itself been given up by the SIU when they had agreed for the new structure as proposed by the respondents so we find that the applicant could not be given promotion prior to 22.8.2001 so the case of the applicant for upgrading of his post of SR to that of MR from an early date is without any merits and the case for quashing and setting aside OM dated 12.2.2002 is also bereft of any merit.

We further hold that the applicant has already been given promotion only w.e.f. 22.8.2001 so the OA does not call for any interference and the same is dismissed. No costs.


(KULDEEP SINGH)
MEMBER (JUDL)


(W.K. MAJOTRA)
MEMBER (CA)

Rakesh