

(3) CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(P)

O.A.No 943/2002

Date of Decision 10.10.2002

Sh. Sukanta Kar ... Applicant
Shri Devesh Singh ... Advocate for the Applicant

VERSUS

Union of India ... Respondents
and Ors.
Sh. K. C. D. Gangwani, ... Advocates for the Respondents
Sr. Counsel and
Mrs. B. Rana

Coram:-

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

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(8)

O.A. 943/2002

New Delhi this the 10th day of October, 2002

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

Sh. Sukanta Kar,
S/o late Sh. Nagendra Kumar Kar,
R/o 702, Minto Road Hostel,
New Delhi.

... Applicant.

(By Advocate Shri Devesh Singh)

Versus

1. Union of India, through
The Secretary,
Department of Urban Development,
Ministry of Urban Development
and Poverty Alleviation,
Nirman Bhawan,
New Delhi-110011.
2. Union Public Service Commission,
through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110011. ... Respondents.

(By Advocates Shri K.C.D. Gangwani, senior counsel - for
respondent No. 1 and Mrs. B. Rana - for respondent No.2)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant has filed this application challenging the validity of the action of the respondents in not considering him for the post of Deputy Adviser (Training), which is a post under Respondent No. 1, in accordance with the relevant Recruitment Rules, i.e. the Ministry of Works and Housing, Deputy Adviser (Training) Recruitment Rules, 1985 as amended in 1987 (hereinafter referred to as '1985 Rules').

2. The Tribunal by an ad interim order dated 8.4.2002 had directed notices to be issued to the

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respondents to file their counter reply. It was further ordered that "Pending further orders, the respondents are directed to permit the applicant to appear in the interview/personal talk going to be held on 10.4.2002. The result of selection will of course be subject to the further orders to be passed in the present case".

3. The main issue raised in the present application is with regard to the question whether the applicant does or does not possess the essential qualifications for the post of Deputy Adviser (Training) as prescribed in the 1985 Rules. The educational qualifications required for direct recruits for the post of Deputy Adviser (Training) provide as follows:

"Essential:

(i) (a) Degree in Civil Engineering of a recognised University or equivalent.

(b) Degree or Diploma in Public Health Engineering of a recognised University/Institution or equivalent or Master's degree in Chemistry/Bio-Chemistry/Biology/Bacteriology of a recognised University or equivalent; or Master's degree in Environmental Chemistry/Biology of a recognised University or equivalent or Associateship or Diploma of institution of Chemists (India) or equivalent.

(ii) 10 years' experience in the field of Public Health Engineering, Water Supply and Sanitation, out of which 3 years' experience should be in organising and conducting training programmes and/or research and development activities.

Note 1: Qualifications are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified.

Note 2: The qualification (s) regarding experience is/are relaxable at the discretion of the Union Public Service Commission in the case of candidates belonging to Scheduled Castes and Scheduled Tribes if, at any stage of selection, the Union Public Service Commission is of the opinion that

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sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.

Desirable:

Doctorate degree in the relevant subject from a recognised University or equivalent".

In Column 8 of the 1985 Rules, it is provided that the educational qualifications prescribed for direct recruits will apply in the case of promotees but not age qualification. Column 9 deals with the probation period for promotee officers and direct recruits. The method of recruitment for the post is prescribed in Column 10 of the 1985 Rules which reads as follows:

"By promotion/transfer on deputation including short term contract failing which by direct recruitment".

Column 11 of the 1985 Rules reads as follows:

"Promotion/Transfer on Deputation (including Short-term contract):

(i) Officers under the Central/State Governments/Public Sector Undertakings/Recognised Research Institution/Semi-Government Statutory or Autonomous Organisations:-

(a) (i) holding analogous posts; or

(ii) with 5 years' service in posts in the scale of Rs.1100-1600 or equivalent; and

(b) possessing the educational qualifications and experience prescribed for direct recruits in Col.7.

(2) The departmental Scientific Officer with 5 years' regular service in the grade will also be considered and in case he is selected for appointment to the post, the same shall be deemed to have been filled by promotion".

(Emphasis added)

4. According to the learned counsel for the applicant, the applicant was directly recruited through the

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Union Public Service Commission (UPSC) as a Scientific Officer in the Central Public Health and Environmental Engineering Organisation of the Ministry of Urban Development of Respondent No. 1 by Notification dated 9.4.1991 w.e.f. 20.3.1991. He has contended that the applicant had more than 10 years' experience as Scientific Officer in the Department and was fully eligible for being considered for promotion to the post of Deputy Adviser (Training), in terms of the aforesaid provisions of the Rules. However, this has been stoutly contested by learned counsel for the respondents. Learned counsel for the applicant has also submitted that the applicant has sufficient experience in subjects dealing with Public Health and Environmental Engineering, apart from the fact that he is also a Departmental Scientific Officer with more than 10 years' experience although only five years experience is required under the Rules. He has relied on the letter from the Ministry, addressed to Respondent No.2-UPSC dated 22.3.2002 in which it has been stated, inter alia, that the applicant is the senior-most among the eligible internal candidates. According to the learned counsel previously also at least two persons who were Scientific Officers in the Ministry who did not possess any Engineering Degree were considered and selected for the post of Deputy Adviser (Training). He has, therefore, contended that the applicant is fully qualified under the Rules and the action of the respondents in holding to the contrary is illegal and arbitrary.

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5. Learned counsel for the applicant has also drawn our attention to the Tribunal's order dated 13.8.2002 in which a direction had been given to the UPSC to keep the relevant records of the selection held on 10.4.2002 available with them for our perusal.

6. Learned senior counsel for Respondent No.1 has submitted that Column 11 of the 1985 Rules cannot be read in isolation and what governs the case of promotion of eligible officers is what is prescribed in Column 8, i.e. that the candidate should have the educational qualifications as prescribed for direct recruits. He submits that Column 11, clause (1) deals with deputation and clause (2) deals with promotion. According to him, in clause 2 of Column 11, there is no mention of the qualifications prescribed for promotion because that has already been dealt with in column 8 whereas the position is otherwise in column 11. According to him, in clause (1) of Column 11, a specific provision has been made for direct recruitment applicable to deputationists whereas that was not required in the case of promotion as the essential qualifications have already been prescribed in column 8.

7. More or less, the same submissions have been made by Mrs. B. Rana, learned counsel for Respondent No. 2 - UPSC. Learned counsel has also submitted that the mere recommendations of an officer of the Ministry even if he be a Secretary, have no bearing on the issue because what has to be seen is the provisions of the Recruitment Rules. We

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have no difficulty in accepting this proposition because what is to be finally considered is the application of the relevant Recruitment Rules in the facts and circumstances of the case. Mrs. B. Rana, learned counsel has also submitted the sealed cover containing the result of the meeting of the Selection Committee (Personal Talks) held on 10.4.2002 which has been opened in Court today. This has been seen by us and thereafter, returned to the learned counsel for the UPSC. However, before dealing with the result of that Selection Committee, we propose to deal with the question of eligibility of the applicant for consideration to the post of Deputy Adviser (Training), in terms of the 1985 Rules. During the arguments, learned counsel for the respondents have submitted that the amendment of the 1985 Rules in 1987 does not have any material effect on the eligibility conditions prescribed in the 1985 Rules.

S. We have carefully considered the provisions of the Recruitment Rules for promotion/direct recruitment/transfer on deputation which have also been reproduced in Para 3 above. It is also relevant to refer to the Rules framed by Respondent No.1 with regard to the post of Scientific Officer i.e. Ministry of Works and Housing (Group "A" Technical Posts) Recruitment Rules, 1978, as amended by the Rules of 1984. The Schedule to the Recruitment Rules of 1978 had been substituted by the Amendment Rules of 1984. With regard to the post of Scientific Officer in the Department, the essential

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qualifications prescribed are (i) M.Sc. degree in Chemistry or Bio-Chemistry or Bacteriology of a recognised University or equivalent. (ii) 5 years' experience in Chemical and Bacteriological method of water and sewage including, those relating to control and operation of water and sewage plants. The Notes below Column No.7 relating to this post (Scientific Officer) are not relevant for the present purposes.

9. In the 1985 Rules for the post of Deputy Adviser (Training), Respondent No. 1, Ministry of Urban Development and Poverty Alleviation have provided in clause (2) that the Departmental Scientific Officer with 5 years' regular service in the grade will also be considered and in case he is selected for appointment to the post, the same shall be deemed to have been filled by promotion. As per the 1987 amendment Rules, instead of 5 years regular service in the grade, the same has been substituted by "with 5 years regular service in the scale of Rs.3000-4500 or equivalent; and..." It is not disputed that the applicant is a Departmental Scientific Officer who has five years' regular service in that post in the scale of Rs.3000-4500 (pre-revised). It is also not disputed by the learned senior counsel for Respondent No.1 that for the Departmental Scientific Officer who has been recruited in terms of the 1984 Recruitment Rules framed by the same Ministry, no other channel of promotion has been prescribed in any other Rules. It is, therefore, significant to note that in Column 11, clause 2 of the 1985 Rules, there is a

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specific mention that the Departmental Scientific Officer with 5 years' regular service in the grade will also be considered and in case he is selected for appointment to the post of Deputy Adviser (Training), the same shall be deemed to have been filled by promotion. Admittedly, there is only one post of Deputy Adviser (Training) in the Ministry which can be filled up by several modes, namely, direct recruitment, promotions and transfer or deputation on short term contract. The contention of both learned counsel for the respondents is that Column 11 has to be read with Column 8 i.e. the Departmental Scientific Officer must have the same educational qualifications as eligible candidates for promotion to the post of Deputy Adviser (Training). However, the specific provision of the Rules i.e. Column 11 cannot also be ignored and must be given effect to. Clause (2) of Column 11 specifically provides that the Departmental Scientific Officer with 5 years regular service in the grade will also be considered and if he is selected, he is deemed to have been filled by promotion which, in our view, does not necessarily mean that he should have the essential qualifications prescribed for other eligible candidates for promotion. As mentioned above, the Rules themselves provide for various methods of recruitment/appointment to the post of Deputy Adviser (Training).

10. It is settled law that the general provisions dealing with promotions and educational qualifications relating to promotions cannot supersede the specific

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provision relating to a Departmental Scientific Officer. If the Departmental Scientific Officer with 5 years regular service in the post, who did not have the Degree in Civil Engineering, which is one of the essential conditions prescribed for direct recruitment/promotion was to be excluded, the rule making authority need not have enacted the specific provision in Column 11, Clause 2 of the 1985 Rules. The rule making authority being aware of the fact that in the case of the Departmental Scientific Officer who has been recruited under the 1984 Rules, there is no avenue of promotion, therefore, a specific provision for that officer has been provided in Column 11, Clause 2. A Departmental Scientific Officer with the requisite qualification of 5 years' regular service in the post will also be considered for selection and if he is appointed is deemed to have been filled by promotion and not by the other methods prescribed in the Rules i.e. direct recruitment/deputation or short term contract basis. If the intention of the rule making authority was to prescribe the same essential qualifications for direct recruits and promotees for this post, then there would have been no need to provide the specific condition applicable to a Departmental Scientific Officer with 5 years' regular service in that post. In Column 10 of the schedule which provides for promotion/transfer on deputation (including short term contract), the officers who are eligible for consideration have been given, including those who possess the educational qualifications and experience prescribed for direct recruits in Column 7. This provision is absent

in the case of Column 11, clause (2) which deals with the Departmental Scientific Officer with 5 years regular service in the grade who if selected and appointed to the post of Deputy Adviser (Training) is deemed to have been filled by promotion. In the absence of any other essential qualification applicable to the Departmental Scientific Officer who can be considered for the post of Deputy Adviser (Training), it appears from the 1985 Rules that no other qualification is applicable except what appears in clause (2) of Column 11 of the Schedule, although the selection process may be treated as a promotion method. In our view, therefore, taking into account the specific provision of the Recruitment Rules of 1985 applicable to the facts of this case, it cannot be held that the applicant does not possess the requisite essential qualifications for making him eligible for consideration to the post of Deputy Adviser (Training).

11. One other argument submitted by the learned senior counsel for the respondents was that in the case of one of the former Scientific Officers in the Ministry, Dr. I Radhakrishnan, he was appointed in 1983, i.e. prior to the coming into force of the Recruitment Rules of 1985. With regard to the other officer, namely, Dr. H.C. Arora, details have not been given. To our mind, both these cases are not germane to the interpretation of the 1985 Rules and, therefore, we do not wish to say anything further.

12. Before we part with this case, it would also be relevant to mention that on opening the sealed cover of

the result of the meeting of the Selection Committee (Personal Talks) held on 10.4.2002 by Respondent No.2/UPSC we find that four officers, including the applicant, had been called for personal talk who had attended the same. The Committee has recommended the applicant for appointment on deputation to the post of Deputy Adviser (Training) in the pay scale of Rs.12000-16000 (revised) in the Central Public Health and Environmental Engineering Organisation, Ministry of Urban Development - Respondent No. 1. Having regard to the provisions of Column No. 11, Clause 2 of the schedule of the Recruitment Rules of 1985, the appointment of the applicant to the post of Deputy Adviser (Training) shall be deemed to be filled by promotion and not by deputation..

13. In case the intention of the rule making authority was to provide that with respect to the eligibility of the Departmental Scientific Officer, the same eligibility conditions as provided for promotees was applicable, there would have been no need to provide a specific provision dealing with them. In our view, this special provision applicable to the Scientific Officers with 5 years regular service in that post who is made eligible for being considered for the post of Deputy Adviser (Training) has, therefore, to be read as an exception to the general provision contained in Column 8 of the Rules. In the circumstances, the specific provision applicable to the Departmental Scientific Officers will be applicable to the applicant in this case. The contention

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of the learned senior counsel for the respondents that column 8 would be redundant cannot be accepted as both columns 8 and 11 can and should be read harmoniously.

14. Therefore, in the facts and circumstances of the case, taking into account the relevant provisions of the 1985 Rules, we are unable to agree with the contentions of the learned counsel for the respondents that the applicant does not possess the eligibility conditions. It is nobody's case that the applicant is not a Departmental Scientific Officer with more than 5 years regular service in the post at the relevant time of cut off date.

15. As mentioned above in accordance with Tribunal's order dated 8.4.2002, the applicant had been provisionally allowed to appear in the interview/personal talk held on 10.4.2002 by Respondent No.2 /UPSC. Accordingly, part of the reliefs have already been granted i.e. consideration for the post of Deputy Adviser (Training). As we have found that he is eligible for being so considered and appointed as per the 1985 Rules and has also been recommended by the duly constituted Committee on 10.4.2002, the respondents are directed to take further action for issuing the appointment order to the applicant to the post of Deputy Adviser (Training). This shall be done as expeditiously as possible and in any case, within one month from the date of receipt of a copy of this order. No order as to costs.

(Govindan S. Tamai)
Member (A)

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Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)