

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.87/2002

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New Delhi this the 24th day of January, 2003

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

Surender Kumar Srivastava,
S/o Shri H.N.Lal Srivastava,
R/O 44-D, Gali No.1,
Sarvodaya Nagar, Ghaziabad
(UP).

Presently working as Senior
Accountant Evacuee Property
Cell, Land and Building
Department, Vikas Bhawan,N/Delhi.

..Applicant

(By Advocate Shri Naveen R.Nath)

VERSUS

1. Govt.of NCT of Delhi,
Through Chief Secretary,
Delhi Secretariat, IG Stadium,
I.P.Estate, New Delhi-2

2. Secretary,
Land and Building Department,
Govt.of NCT of Delhi,
Vikas Bhawan, New Delhi.

3. Shri H.S.Bhatia,
Consultant,
Evacuee Property Cell,
Land & Building Department,
Govt.of NCT of Delhi,
Vikas Bhawan, New Delhi.

..Respondents

(By Advocate Sh.D.N.Goberdhan,
learned counsel for Ms.Geeta
Luthra)

(Respondent No.3 present in
person)

O R D E R (ORAL)

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

In this application, the applicant has
challenged what he terms is the arbitrary action of the
respondents in not holding ^{a R} DPC for the post of Assistant
Settlement Officer (ASO). He has also challenged the



appointment of respondent No.3, Shri H.S.Bhatia, as Consultant by order dated 5.1.2000 in Evacuee Property Cell(EPC) of Land and Building Department on contract basis initially for a period of six months which has been extended from time to time.

2. The brief relevant facts of the case are that the applicant is working as Senior Accountant in the office of the respondents. According to him, he is eligible to be considered for promotion to the next post of ASO. Shri Naveen R.Nath, learned counsel for the applicant has submitted that instead of considering the applicant for promotion as per the Recruitment Rules, the respondents have wrongly appointed Respondent No.3 as Consultant who is only doing routine nature of work which an ASO would be required to do. He has referred to the Govt.of India, DOP&T OM dated 13.2.1998 (Ann.A.9) which is a Scheme for engagement of Consultants. He has submitted that the age limit for employing a retired Govt.servant as Consultant is 62 years and Respondent No.3 who had retired from service on 31.8.1992 has well passed that age. He has also submitted that a Consultant cannot be appointed to do the regular nature of job which will be done by a regular employee. In the circumstances, he has vehemently submitted that the action taken by the respondents is illegal and against the recruitment rules and the guidelines for engagement of such persons. Respondent No.3 has, according to him, defeated the claim of the applicant for promotion to the next post of ASO. He has

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relied on a number of documents annexed to the rejoinder from which learned counsel has contended that Respondent 3 is only doing the routine nature of work of an ASO.

3. Shri Naveen N.Dass, learned counsel for the applicant has referred to the Govt. of India letter dated 20.4.1999 on the subject of Management and disposal of evacuee urban and rural properties and lands situated in the Union Territory of Delhi. In terms of Para 5 of this letter, consequent upon the transfer of work to Delhi Administration, 46 posts along with the incumbents were transferred to Delhi Administration w.e.f. 1.5.1989. Learned counsel has submitted that the transferred incumbents have to be kept en block as a separate Unit and their inter-se-seniority, promotion and confirmation etc. have to be governed by the Govt. of India's existing recruitment rules pertaining to these posts. One such post mentioned in the Schedule to this letter is the post of ASO. He has submitted that Respondent No.3 has retired from service as ASO and by appointing him thereafter, as Consultant for doing the routine nature of work of ASO it has deprived the applicant his claim for promotion to that post. In the facts and circumstances of the case, the applicant has prayed for quashing of the impugned office order dated 5.1.2000, together with the extension orders pertaining to Respondent No.3 as Consultant, with a further direction to the respondents not to give him further extensions in that capacity. He has also prayed for a direction to the respondents to hold the DPC for the post

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of ASO, in accordance with the GOI Instructions dated 13.5.1991 and recruitment rules without any delay.

4. The respondents in their reply have controverted the above averments. Shri D.N.Goverdhan, learned proxy counsel for the official respondents has submitted that the applicant has prayed for multiple reliefs which are, therefore, not maintainable under the provisions of the Central Administrative Tribunal (Procedure), Rules, 1987. He has also submitted that the applicant has no grievance to file this application, having regard to the provisions of Sections 14 and 19 of the Administrative Tribunals Act, 1985. Learned counsel has contended that on these preliminary objections itself the OA should be dismissed.

5. On the merits of the case, learned proxy counsel for the respondents has submitted that by order dated 2.11.2001, the approval of the Secretary, Land and Building had been given that the posts which were created for settlement of the claims of migrants who came to India in 1947-48 as per the Evacuee Property Rules could be made upto 1963. Hence, a decision was taken that the existing officers were sufficient to take care of any proceedings which have been initiated arising out of these claims and there was no requirement for filling up the post of Settlement Officer (SO) or ASO. He has contended that the decision of the respondents to fill or not to fill the post of ASO, is within their executive power and scope of

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the letter dated 20.4.1989, which has also been referred to by the learned counsel for the applicant. He has also relied on clause 6 of this letter. Learned counsel has contended that the post of ASO was not required after the passage of time, as the claims dealt with were only from 1947 to 1963 as per the Evacuee Property Rules. He has submitted that the decision to fill or not to fill up the post is an administrative decision in which the Tribunal/Courts should not interfere. He has submitted that taking into account the job contentment of the work under the Evacuee Property Cell, wherein a number of documents were in Urdu and the staff were not familiar with that language, at the instance of the Hon'ble Lt. Governor a decision had been taken by the respondents to engage an expert, like respondent No.3, who is proficient in Urdu and conversant with the rules, bye-laws and guidelines etc. pertaining to cases related to Evacuee properties. Respondent No.3 has been directed to assist the Sr. Officer of the Evacuee Property Cell by going through the records of the pending cases. His appointment had been earlier challenged by one Shri Pratap Singh, who had filed a petition in the Hon'ble Delhi High Court, which was dismissed by order dated 19.4.2002. The respondents have also filed an additional affidavit annexing Notification dated 15.10.2001. By this Notification, the Associate Town and Country Planner/ Assistant Housing Commissioner in the Land and Building Department, Govt. of National Capital Territory of Delhi were appointed as Managing Officers, in addition to their

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own duties, for performing the duties assigned to them under the Displaced Persons(Compensation & Rehabilitation) Act, 1954. Learned counsel for the respondents has also referred to the order dated 2.12.2002, annexed to the additional affidavit, the relevant portion of which reads as follows:-

"Three ex-cadre posts of Assistant Settlement Officer in the pay scale of Rs.6500-10500 in Evacuee Property Cell (Land & Building Department) are lying vacant. Consequent upon delegation of powers of Managing Officers (EPCell) upon two existing officers of the Land & Building Department by Ministry of Home Affairs (Rehabilitation Division), Government of India vide notification No.1(1)/2001-Settlement dated 15th October, 2001, these posts are no more required to be filled up in the E.P.Cell (L&B). Therefore, the said three posts of ASO in EP Cell (L&B) are hereby abolished with immediate effect."

(Emphasis added)

Shri D.N. Goverdhan, learned proxy counsel has submitted that the Govt. has, by the aforesaid order dated 2.12.2002 decided that the posts of ASO are no longer required in the Department. Therefore, those posts stood abolished and the applicant has no claim for appointment to the post of ASO.

6. After careful perusal of the relevant facts, documents on record and the submissions made by the learned counsel for the parties, we find no merit in this application. It is not necessary to repeat the facts of the case as they have already ^{been} mentioned above. It is clear from the above order that the claims dealt with by Evacuee Property Cell pertains to the period from 1947 to 1963, and

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an administrative decision has been taken by the competent authority to the effect that the posts of ASO in the Evacuee Property Cell are no longer required to be filled and those posts were accordingly abolished in December, 2002. In the facts and circumstances of the case, no direction can be given to the respondents to hold a DPC for filling the posts of ASO by promotion in accordance with the Govt. of India instructions.

7. It is settled law that it is open to the competent authority to either fill or not to fill any particular post, taking into account the relevant factors and the administrative exigencies. In the present case, it cannot be held that the decision taken by the respondents to abolish the posts of ASO is either illegal or arbitrary to justify any interference in the matter. Apart from this, we are also satisfied that the appointment of respondent 3, Shri H.S. Bhatia, as consultant to do certain specialised jobs of dealing with documents which are in Urdu pertaining to the Evacuee Property Cell, cannot also be faulted. In the facts and circumstances of the case, the contention of the learned counsel for the applicant that the appointment of respondent No. 3 as consultant in Evacuee Property Cell adversely affects his claim for being promoted to the post of ASO is without any basis. The competent authority has already taken a decision that the posts of ASO are no longer required in that Department by the order dated 2.12.2002, referred to in para 5 above which have been abolished.

8. In the result, for the reasons given above, we see no merit in this application. The OA accordingly fails and is dismissed. No order as to costs.

(Govindan S. Tampi)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)