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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1530/2001

New Delhi, this the 27th day of May, 2002

Hon'ble Shri Kuldip Singh, Member (Judl)
Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Shri B.D.Baweja son of Shri D.C.Baweja
working as Asstt. Director General (Pension)
Postal Directorate, New Delhi R/O New Delhi,
address for service of notices C/O Sh. Sant Lal
Advocate, C-21 (B) New Multan Nagar
Delhi-56

..Applicant

(By Advocate: Shri Sant Lal)

Versus

1. The Union of India through the Secretary
Department of Posts,
Ministry of Communications
Dak Bhawan, New Delhi-1
2. Shri Subhash Chander,
Under Secretary
Designate Director (SR)
Postal Directorate
C/O Director Staff, O/O the D.G. Posts,
Dak Bhawan, New Delhi-1.

..Respondents

(By Advocates: Shri Adish C. Aggarwal for R-1
& Shri K.C. Sharma for R-2)

O R D E R

Shri S.A.T. Rizvi:

The appointment of one Shri Subhash Chander, a
CSS officer, respondent No.2 herein, as Director (Staff
Relations) on deputation basis for a period of 4 years
vide respondents' order dated 6.6.2001 (A-1), has
occasioned the filing of the present OA. According to
the applicant, the aforesaid appointment is illegal and
contrary to the relevant rules and instructions. He,
therefore, prays that the aforesaid order (A-1) be
quashed and set aside and the respondents ³ directed to
consider the applicant's case for appointment to the post
of Director (SR) in accordance with the Recruitment Rules
and the submissions made in the representation dated

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12/29.9.2000 together with the grounds reiterated in the present OA. He also prays for the grant of consequential benefits.

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. Briefly stated the facts relevant for proper adjudication of the present OA are as follows.

4. On 4.10.1999, the respondents issued a circular letter (A-5) calling for applications for appointment to the post of Director (SR) in the Department of Posts carrying the pay scale of Rs.12000-16500/-. It was indicated that as per the rules of recruitment, the post was to be filled by transfer on deputation from amongst officers under the Central Government.

- a) (i) holding analogous post on regular basis, or
- (ii) with 5 years regular service in post in the scale of Rs.10,000-15,200 or equivalent; and
- b) Possessing experience in handling of Staff and establishment matters.

The applications were to be submitted latest by 1.1.2000. An identically worded public notice was issued vide Employment News of 18/24.12.1999 again fixing 1.1.2000 as the last date for the receipt of applications.)

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5. The corresponding provisions made in the relevant Recruitment Rules are, to an extent, different from the contents of the aforesaid circular letter/public notice. According to the Recruitment Rules (A-2) notified in October, 1985, the appointment to the post of Director (SR) is to be made by transfer on deputation from amongst officers under the Central Government.

- 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 experience in handling of staff and establishment and union matters.

6. It will be seen that the difference between the provisions made in the aforesaid circular/public notice and the relevant Recruitment Rules lies in that while the aforesaid circular/public notice does not stipulate experience in handling union matters, the same finds mention in the aforesaid Recruitment Rules and besides while in the aforesaid Recruitment Rules, the requirement of 5 years of 'service' has been prescribed, the description given in the aforesaid circular/public notice provides for regular service of 5 years.

7. The applicant's case is that having been appointed in the CSS Gr.I in the pre-revised pay scale of Rs.1100-1600/- w.e.f. 31.5.1994, he had clearly completed more than 5 years of regular service in that pay grade before 1.1.2000, whereas the respondent No.2, who was placed in the aforesaid pay scale of Rs.1100-1600/- w.e.f. 28.11.1996 had not done so by the

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said date and, therefore, while the applicant was eligible for appointment as Director (SR), the respondent No.2 was not eligible on account of his length of service in the aforesaid pay grade being less than 5 years as on 1.1.2000. In addition, according to the applicant, while he possessed the requisite experience of handling union matters, the respondent No.2 came to possess that experience only after 1.1.2000 which cannot be accepted. The contention raised is that the prescribed qualifications must ~~not~~ be found to have been fulfilled before the last date of application. In support of his claim that the respondent No.2 did not possess the requisite experience in handling union matters by the prescribed date (1.1.2000), the applicant has drawn our attention to the contents of the certificate dated 25.10.2001 placed at (RA-4) which has been issued by the Desk Officer in the Ministry of HRD and provides that while acting as Incharge of Establishment-II and III Sections of the Ministry from 13.4.2000 to 8.6.2001, the respondent No.2 was handling matters relating to staff union. In short, the applicant finds himself more eligible than the respondent No.2, as, according to him, he not only possesses the requisite experience in handling union matters and a regular service of 5 years, he also, at the same time, happens to be senior to the respondent No.2.

3. At the outset, therefore, we find it necessary to clear the ground by stating that law is well settled that in the case of a difference between the provisions made in Recruitment Rules and similar provisions made elsewhere, the provisions made in the Recruitment Rules

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will prevail. Thus, in the present situation, it will be enough if an officer seeking appointment on transfer on deputation basis has rendered 5 years of service in a post in the pay scale of Rs.1100-1600/- (pre-revised) and besides possesses experience in handling union matters as well in addition to experience gained in handling staff and establishment matters.

9. In reply filed on behalf of the respondent No.2, it has been made clear that he has been working in the pay scale of Rs.1100-1600 (pre-revised) right from 31.5.1991 and, that being so, it cannot be successfully contended that he is not qualified for appointment as Director (SR) due to any shortfall in the length of service in the aforesaid pay scale. Insofar as his experience in handling union matters is concerned, an averment has been made in the detailed reply filed on his behalf that the respondent No.2 has been looking after the work of administration, including union matters during the period from 31.5.1991 to 30.12.1996. Thus, even if the experience acquired by him in dealing with union matters from April, 2000 to 8.6.2001 is ignored, he will still be found to possess sufficient experience in handling union matters. Insofar as the contention of seniority raised on behalf of the applicant is concerned, the learned counsel appearing on behalf of the respondent No.2 has categorically asserted that in this respect also the respondent No.2 has an edge over the applicant. In support of this claim, a Comparative Career Chart has been placed at RA-5 which goes to show that while the respondent No.2 was appointed in the pay scale of Rs.1100-1600/- in May, 1991, the applicant came to be

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appointed to the said pay scale only in June, 1994. None of the averments made on behalf of the respondent No.2 in the above has been seriously controverted by the applicant. In our view, therefore, it is clearly established that the respondent No.2 had the necessary experience in handling union matters and also possessed more than 5 years of service in the pay scale of Rs.1100-1600/-.

10. Yet another issue raised on behalf of the respondent No.2 relates to the age of the applicant as on 1.1.2000. The contention raised is that having crossed the age limit of 56 years as on 1.1.2000, the applicant could never be appointed to the post of Director (SR). In support of this contention, the respondent No.2 has placed reliance on the instructions issued by the DOPT on 17.11.1992, a copy of which has been placed at A-R-1/1. These instructions, we find, are in the nature of general instructions issued by the DOPT so as to provide for situations not covered by the Recruitment Rules and the executive instructions issued from time to time. The Ministry of Personnel, Public Grievances & Pension (DOPT) is the noddle Ministry for dealing with service matters and this has been provided in the Allocation of Business Rules. These Rules read along with Transaction of Business Rules of the Govt. of India give powers to the DOPT to issue circular instructions in respect of matters where the Recruitment Rules are silent and need to be supplemented. Officers, who have crossed the age of 56 years, are not to be allowed to proceed on deputation as a short tenure of an over-aged officer is ^{is not} likely to serve the desired purpose. Accordingly, the matter has been

clarified by the DOPT by issuing the aforesaid circular instructions. These are, in our view, good and binding on the Ministries of Govt. of India, including the respondent-department. In this view of the matter, we cannot accept the plea advanced on behalf of the applicant that such a provision finds mention neither in the Recruitment Rules nor in the aforesaid circular/public notice and, therefore, the same cannot be applied in the present case. Recruitment Rules and executive/administrative instructions issued under a valid authority are binding under all circumstances.

11. The learned counsel appearing on behalf of the applicant has vehemently argued that the provision made in the aforesaid circular/public notice in regard to 5 years' regular service should in any case be adhered to. We do not agree. We have in fact already noticed that the relevant Recruitment Rules provide for only 5 years of service. The word 'regular' has not been mentioned in the said rules. The erroneous provision made in the aforesaid circular/public notice will, therefore, have to give way to the actual provision made in the Recruitment Rules which is clear as well as unambiguous. While on this point, we must point out that the applicant himself has been working in the pay scale of Rs.1100-1600/- only on ad-hoc basis and not on regular basis and, therefore, the learned counsel insisting over much on the service being regular will not in any way further the cause of the applicant.

12. On behalf of the applicant, reliance was also placed on Office Memorandum dated 8.5.2001 issued by the

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DOPT on the subject of 'Determination of eligibility for appointment on deputation terms in Central Government'. On consideration, we find that the same will not find application in the present case inasmuch as the said Office Memorandum can be applied only prospectively. The last date for filing applications in the present OA was 1.1.2000 and, therefore, the conditions applicable only as on 1.1.2000 can be applied in the present situation.

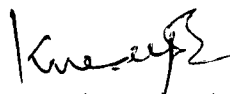
13. The Recruitment Rules in question also provide 'not applicable' in column 5 thereof. This would imply that the post of Director (SR) is neither a selection post nor a non-selection post. According to the respondents, the post of Director (SR) has been included in the GCS (ex-cadre) and, therefore, consistently with the aforesaid provision made in column 5 of the Recruitment Rules, a choice was required to be made from amongst the various applicants for the post of Director (SR) purely on the basis of merit having regard, of course, to the other provisions made in the Recruitment Rules. Since the condition of service, being regular service, has not been specifically and clearly stipulated in the Recruitment Rules, the respondents are, in our view, within their rights to take into account the entire service rendered by any of the applicants for the post in the pay scale of Rs.1100-1600/- irrespective of whether the service so rendered, wholly or in part, was ad-hoc in nature or else was performed on deputation. The official respondents have accordingly proceeded to make a selection from amongst the various applicants for the post through a selection committee consisting of very

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senior officers, including a senior representative of the DOPT. We do not agree with the applicant that the official respondents have committed any mistake by constituting a selection committee even though a corresponding provision has not been made in the Recruitment Rules. What is material is that the final decision on the basis of which appointment has been made, has been taken by the competent authority. The presence of a senior representative of the DOPT in the selection can be seen as an advantage inasmuch such a representative is expected to see that the relevant instructions together with the provisions of the Recruitment Rules are necessarily complied with.

14. In the light of the foregoing, we find no merit in any of the pleas advanced on behalf of the applicant. The OA is accordingly dismissed. There shall be no order as to costs.


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


(Kuldip Singh)
Member (J)

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