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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO 2374/2001

New Delhi this the 25th day of September, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

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

Shri J.C.Jain
Director (Publicity)
Ministry of Small Scale Industries
Nirman Bhawan
New Delhi. Applicant

(By Shri B.S.Maine, Advocate)

-versus-

UNION OF INDIA

Through

1. The Secretary
Ministry of Information & Broadcasting
Shastri Bhawan
New Delhi.
2. The Secretary
Ministry of Personnel & Training
North Block
New Delhi.
3. The Secretary
Ministry of Small Scale Industries
Udyog Bhawan
New Delhi. Respondents

(By Shri R.P.Agarwal, Advocate)

O R D E R

Justice V.S.Aggarwal:-

Applicant (J.C.Jain) by virtue of the present application seeks a direction to the respondents to consider his case for induction into the Indian Information Service (for short, "the IIS") in accordance with the recommendations of the Fifth Central Pay Commission and the Resolution passed by

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the Secretary, Ministry of Small Scale Industries, (respondent No.3) in the year 1995 and to place him in the abovesaid service at the appropriate place.

2. Facts alleged are that the applicant was appointed as Director (Publicity) on 25.1.1985 under the Ministry of Small Scale Industries in the Junior Administrative Grade. He was recruited directly through the Union Public Service Commission and since then had been working on the said post. On 23.5.1990, the Government of India issued guide-lines relating to the isolated posts in Group 'A' in various Ministries/Departments of the Government of India. In accordance with the said guide-lines, the Personnel Research Division of the Department of Administrative Reforms and Public Grievances conducted a detailed study of the position of isolated Group 'A' posts and a number of measures had been suggested. It was urged that whenever the Ministries/Departments had initiated action for induction of isolated posts into the existing cadre, the process of encadrement should be expedited.

3. The grievance of the applicant is that no steps were taken to encadre the post of the applicant. The matter had also been considered by the Fifth Central Pay Commission which had recommended that Group 'A' posts wherever they exist should be encadred in the IIS. It had also

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recommended that no isolated post should be created/sanctioned in future in Government and the posts sanctioned should always be a part of the organised cadre. The said recommendations of the Fifth Central Pay Commission had been accepted by the Government of India. In terms of the Resolution dated 30.9.1997, it was decided to give careful consideration to the recommendations of the Commission and the recommendations of the Commission in respect of certain categories of Central Government employees and also those in the All India Services were to accepted subject to certain modifications. Despite the recommendations, the applicant's post was not encadred in the IIS. The applicant had even submitted a representation which had been rejected. Hence the present application.

4. In the reply filed, the respondents have contested the same. It is not disputed that the applicant had joined Small Industries Development Organisation as Hindi Translator. He was promoted to the post of Assistant Editor (English) on 16.1.1976 on ad hoc basis. He was appointed as Deputy Director (Publicity) through the Union Public Service Commission and to the present post of Director (Publicity) again through the Union Public Service Commission as a direct recruit.

5. The respondents' plea is that as per the

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recruitment rules, the method of recruitment to the post of Director (Publicity) is by promotion/transfer on deputation failing which by direct recruitment. The feeder grade for promotion to the post of Director (Publicity) consists of officers in the rank of Deputy Director (Publicity). The method of recruitment to the post of Deputy Director (Publicity) is by promotion from amongst the Assistant Director (Publicity) failing which by direct recruitment. It is not disputed that the recommendations of the Fifth Central Pay Commission were accepted by the Government of India but it was specifically mentioned that the department's specific recommendations which were not included in the resolution shall be processed by the concerned Department/Ministry. The resolution dated 30.9.1997 whereby the recommendations of the Commission were accepted did not provide for the automatic inclusion of the posts of Director (Publicity) and Deputy Director (Publicity) in the IIS. It is denied in these circumstances that the applicant has a right claim in the application.

6. The first and foremost question that comes for consideration before us is pertaining to the structure of the posts and the manner of recruitment. The applicant holds the post of Director (Publicity) and the recruitment rules besides providing the age and the educational qualifications further prescribe that the post can

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be filled by "promotion/transfer on deputation failing which by direct recruitment". In the case of promotion/transfer on deputation, the officers can be from the Central/State Government holding analogous posts or with at least 3 years' service in the post in the scale of Rs.1100 - 1600 or equivalent. The Deputy Director (Publicity) with 3 years' service in the grade rendered after appointment on regular basis and possessing the qualifications and experience prescribed for direct recruitment will also be eligible and can be considered. In other words, the post of Deputy Director (Publicity) is also feeder post for the abovesaid post of Director (Publicity). There is one post of Deputy Director (Publicity) and it can be filled up by promotion failing which by direct recruitment. In the case of promotion to the post of Deputy Director (Publicity), the Assistant Director (Grade I) (Publicity) with 5 years' service in the grade rendered after appointment is eligible to be considered on regular basis. The feeder post of Assistant Director (Grade I) (Publicity) can be filled by promotion failing which by direct recruitment. For promotion, Assistant Director (Grade.II) (Publicity) (English) and Assistant Director (Grade.II) (Publicity) (Hindi) with three years' service are eligible. In this process, the structure of the post clearly shows that so far as the post of Director (Publicity) is concerned, the same is to be filled by promotion from the post of Deputy Director

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(Publicity) or by transfer on deputation. In other words, there is a channel of promotion for the post of Director (Publicity). It is urged in that background that it is not an isolated post.

7. The learned counsel for the applicant in any case relied upon the report of the Fifth Central Pay Commission to urge that since it is a single isolated post, it was recommended that it should be encadred in IIS. Indeed that is not the position in so far as the report of the Fifth Central Pay Commission is concerned. In the case of isolated post, the recommendation was:-

"22.41. Promotion opportunities to those holding isolated posts are almost non-existent. Since such isolated posts are filled by direct recruitment, incumbents of these posts generally retire in the same post to which they were recruited. Representations have been received by the Commission that in many cases isolated posts are created even when the nature of duties assigned to the post are similar to those of a cadre post. We, therefore, feel that as a matter of policy, no isolated post should be created/sanctioned in future in Government. Posts sanctioned by Ministries/Departments should always be a part of some organised cadre. If creation of a single post is indispensable, and it cannot be part of an organised cadre in the Ministry, efforts should be made to encadre such a post in an organised cadre existing in some other Department/Ministry. Such an attempt needs to be made even now and Ministries/Department should review the isolated posts with a view to encadre them in an organised cadre in the Ministry/Department or outside it. In case creation of an isolated post becomes indispensable, the two higher scales to be given in a time bound manner under the Assured Career Progression scheme should be indicated in the orders for creation of the post itself."

It was proposed further that the the post of Director (Publicity) should be encadred in IIS.

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But this report as such has not been accepted. The report had clearly recommended that the specific recommendations which are not included in the resolution, should be processed by the the concerned Department/Ministry and thereupon appropriate orders can be passed .This is apparent from the Resolution No.50(1)/IC/97 dated 30.9.1997. In other words, the respondents can be taken to be correct when it is stated that the report of the Fifth Central Pay Commission as such in toto has not been accepted.

8. It is apparent from what has been reproduced above that there is a feeder post to the post of Director (Publicity). The Deputy Director (Publicity) has not opted for induction of his post in the IIS. If the post of Director (Publicity) is encadred in the IIS, it would affect the promotional prospects of the Deputy Director (Publicity). The respondents have further pointed that if the said post is inducted in IIS, it would affect the service prospects of other officers also. Taking stock of the totality of the facts, reasons so given cannot be ignored. There is no right of the applicant that the post of Director (Publicity) should be inducted in the IIS. In the absence of any such right, the claim of the applicant is without merit.

9. The application being without merit must fail and is dismissed. No costs.

V.K. Majotra
 (V.K.Majotra)
 Member (A)

V.S. Aggarwal
 (V.S.Aggarwal)
 Chairman

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