

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.3084/2001

New Delhi, this the 23rd day of August, 2002

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. M.P. Singh, Member (A)

Gulab Singh Mehra
Public Prosecutor
Directorate of Prosecution,
Delhi Tis Hazari.

....Applicant

(By Advocate : Dr. S.P. Sharma)

Versus

1. Union of India through
(Secy, of Home Affairs)
North Block, New Delhi.
2. The Lt. Governor,
Delhi, Raj Niwas,
Delhi.
3. The Union Public Service Commission
Shahajahan Road, New Delhi.
4. National Capital Territory Region,
(Through : Chief Secy. NCTR, Delhi.
Players Building, ITO, New Delhi.
5. Shri S.K. Dutta,
Director Prosecution,
Tis Hazari Courts, Delhi.

....Respondents

(By Advocate : Shri Vijay Pandita)

ORDER (ORAL)

Mr. Kuldip Singh, Member (J) :

We have heard Dr. S.P. Sharma, learned counsel for applicant and Shri Vijay Pandita, learned counsel for respondents.

2. Applicant has filed this OA seeking the following reliefs:
- i) The record of the respondent may kindly be summoned and perused.
 - ii) That the respondents No.1 to 4 may please be directed to frame Recruitment Rules to the posts of Public Prosecutor and Director Prosecution within a specified period.
 - iii) The applicant may kindly be paid pay and allowances for the post of Public Prosecutor as per the F.R. 49, with effect from 7.6.96 the day of adhoc appointment, which is being denied to the applicant illegally and arbitrarily.
 - iv) The service of the applicant as Public Prosecutor, be regularized with effect from 7.6.1996, for all intents and purposes."

3. The main grievance of the applicant is that in the Directorate of Prosecution, Delhi Administration, there is a post of Public Prosecutor, which has been created under the provision of Section 24 of Criminal Procedure Code. The applicant further claims that he is the senior-most Chief Prosecutor and he was posted as Public Prosecutor on adhoc basis w.e.f. 7.6.1996 vide (Annexure P-3). The tenure of the post vide Annexure P-4 was further extended for a period of six months or till such time regular arrangement is made, whichever is earlier, with immediate effect. Subsequently, the applicant was transferred as Chief Prosecutor, PFA Department, Delhi. The next contention of the applicant is that he is in the cadre of Prosecutor in the NCTR Delhi and the Prosecutors are in the following hierarchy:-

"Director Prosecution
I
Public Prosecutor
I
Chief Prosecutor
I
Senior Prosecutor
I
Assistant Prosecutor"

It is further stated that all the above posts in the cadre of Prosecutor are having different duties and the appointments in these posts are made under Sections 24 and 25 of the Criminal procedure Code. Since the applicant has been appointed on ad hoc basis from the post of Chief Prosecutor to the post of Public Prosecutor w.e.f. 7.6.1996 and since then he is carrying the responsibilities of this post and this post is below the post of Director Prosecution. The applicant has further submitted that there are no rules framed by the respondents for the post of Public Prosecution, so the respondents should be directed to frame the Recruitment Rules for the post of Public Prosecutor.

4. Respondents have contested the OA and have stated that the post of Public Prosecutor is a fiction of law and separate Recruitment Rules may not be necessary for the said post. Respondents have also mentioned that as per the provision of Section 24 (6) of Criminal Procedure Code, the post of Public

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Prosecutor is to be filled from cadre of Prosecuting Officer.
 Section 24 (6) Cr.P.C. is reproduced herein below for easy
 reference:-

"Notwithstanding anything contained in sub section 5, where in a state there exists a regular cadre of Prosecuting Officers, the state Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such cadre:

Provided that where, in the opinion of the state Government, no suitable person is available in such cadre for such appointment the Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub section (4)."

5. It is further stated by the respondents that the post of Public Prosecutor is not a promotional post. It only carries a special pay of Rs.200/- per month attached to the post in addition to pay of Chief Prosecutor. There is no difference between the pay scales of pay of Public Prosecutor and Chief Prosecutor. The learned counsel for the respondents has also stated that they have already sent Recruitment Rules to the UPSC for concurrence ^{for} approval for all the posts which are existing in the cadre of Directorate of Prosecution. Learned counsel for the applicant has, however, pointed out that in the amended Recruitment Rules, the post of Public Prosecutor has not been shown, which has been sent to the UPSC for approval.

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

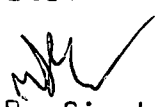
7. The short question in the present case for adjudication is whether any special Recruitment Rules are required to be framed for the post of Public Prosecutor or not. The arrangement by which the appointment to the post of Public Prosecutor is made is that the pay scale attached to the post of Chief Prosecutor + special pay of Rs.200/- is attached to the post, i.e., Rs.700-40-900-EB-40-1100-50-1300 (PRE-REVISED) + Rs. 200/-. As such we find that the post of Public Prosecutor


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is the post which can be filled from the cadre of Chief Prosecutors. As per the provisions of Section 24 (6) of Criminal Procedure Code also, the post of Public Prosecutor is to be filled from the cadre of prosecutors and also carry the same pay scale ^{or in} ~~on~~ that of Chief Prosecutor. Hence, a person can be appointed from amongst the cadre of Chief Prosecutor, who are also carrying the same pay scale. Thus in our view ~~also~~ ^{separate} no such rules are required to be framed for the post of Public Prosecutor. However, for the purpose of appointment of Chief Prosecutor to the post of Public Prosecutor, the department must show transparency in the appointment of any Chief Prosecutor to the post of Public Prosecutor. The department should also take care of the seniority as one of the factor for appointment to the post of Public Prosecutor.

8. As regards the relief claimed by the applicant in para 8 iii) of the OA, the applicant has given up the same. As we have observed above that no rules for the post of Public Prosecutor are required, therefore, the OA is dismissed. However, as we have also observed above that there should be transparency in the appointment of any Chief Prosecutor to the post of Public Prosecutor, the same will be considered by the respondents.

No costs.


(M.P. Singh)
Member (A)


(Kuldip Singh)
Member (J)

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