

18

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

1) O.A. NO. 675/2001

2) O.A. NO. 939/2001

This the 9th day of May, 2002.

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

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1) O.A. NO. 675/2001

C.B. Narnauli S/O Bihari Lal Narnauli,
R/O 622, Gali No. 4,
Ganesh Nagar No. 2, Shakarpur,
Delhi-110092.

... Applicant

-versus-

1. Union of India through
Secretary, Government of India,
Ministry of Home Affairs,
Department of Official Language,
Lok Nayak Bhawan, Khan Market,
New Delhi.

2. Under Secretary, Govt. of India,
Ministry of Home Affairs,
Department of Official Language,
Lok Nayak Bhawan, Khan Market,
New Delhi.

3. Secretary, Govt. of India,
Ministry of Civil Aviation,
Udyog Bhawan, New Delhi.

... Respondents

2) O.A. NO. 939/2001

1. Raghunath Singh S/O Hardev Singh
working as Deputy Director (Official Language),
R/O C-8/214, Yamuna Vihar,
New Delhi.

2. Dr. Pushplata Singh W/O Dr. B.N. Singh,
working as Deputy Director (Official Language),
R/O A-27, Pandara Road,
New Delhi.

... Applicants

-versus-

1. Union of India through
Secretary, Government of India,
Ministry of Home Affairs,
Department of Official Language,
Lok Nayak Bhawan, Khan Market,
New Delhi.

h

2. Under Secretary, Govt. of India,
Ministry of Home Affairs,
Department of Official Language,
Lok Nayak Bhawan, Khan Market,
New Delhi.

... Respondents

(By Shri Yogesh Sharma, Advocate for Applicants and
Shri R.V.Sinha, Advocate for Respondents)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Issues involved in these OAs being identical, they
have been taken up for disposal by a common order.

2. Applicants in these OAs have challenged action
of respondents in not holding OPC meeting to fill up the
post of Director by way of promotion from the post of
Deputy Director. In OA No.675/2001, applicant, Shri
C.B.Narnauli, has also challenged Annexure A-1 order
dated 7.3.2001 reverting him from the post of Director to
that of Deputy Director with effect from 28.3.2001.

3. Applicant in OA No.939/2001, Shri Raghunath
Singh, has retired from the post of Deputy Director with
effect from 31.1.2002.

4. Learned counsel of applicants Shri Yogesh
Sharma stated that applicant Shri Narnauli had been
promoted to the post of Director on ad hoc basis vide
order dated 4.9.2000. He had become eligible for
promotion to the post of Director having completed five
years of regular service as Deputy Director with effect
from June, 1999. Similarly applicants Shri Raghunath
Singh and Dr. Pushplata Singh had become eligible for
promotion to the post of Director w.e.f. 19.5.1999 and

66

2.8.1999, respectively having completed five years of service as Deputy Directors. Learned counsel stated that five posts of Director had fallen vacant in September, 2000 but DPC has not been held since then. Learned counsel relying on **Y.V.Rangaiah & Ors. v. J.Srinivasa Rao & Anr.**, 1983 (1) SLR 789 (SC) contended that vacancies which occurred prior to amended rules are governed by the old rules and not the new rules. He further relied on **Lalin Kumar Mahto v. State of West Bengal & Ors.**, 1999 (1) SLR 452 (Calcutta High Court) holding that subsequent rules cannot be given retrospective effect in matters of appointment. Learned counsel of applicants further stated that although respondents had forwarded relevant papers in September, 2000 to UPSC to convene the DPC meeting for filling up the posts of Director, yet so far neither DPC has been held nor have Government created the intermediate posts of Joint Director as per recommendations of the Fifth Central Pay Commission (CPC). Recruitment rules for the post of Joint Director etc. have also not been notified as yet.

5. Respondents' counsel Shri R.V.Sinha stated that Shri Narnauli was promoted as Director (Official Language) on ad hoc basis for a period of six months vide order dated 4.9.2000 which does not bestow upon him any claim for further continuation in the post of Director (Official Language). He stated that respondents had sent a proposal to UPSC in July, 2000 for filling up the posts of Director (Official Language) but UPSC advised that the existing recruitment rules for promotion to the post of

[Signature]

Director have become inoperative as the pay scale of Director's post has been upgraded from Rs.12000-16500 to Rs.14300-18300 and as such promotion to the post of Director would be considered only after amendment in the recruitment rules. Learned counsel further stated that DOP&T instructions for holding DPC meetings on a yearly basis to fill up vacancies in accordance with rules are merely of guiding nature and not mandatory. He further stated that as per Department of Official Language order dated 17.8.2001, twenty posts out of a total of 49 posts of Deputy Director have been upgraded in the pay scale of Rs.3700-5000 [Rs.12000-16500 (revised)] as Joint Director as recommended by the Fifth CPC. The revised pay scales have to be granted from prospective dates, i.e., from the date they assume charge of the upgraded post after promotion/appointment on the basis of recommendations made by UPSC.

6. It is an admitted position that five posts of Director have been vacant since September, 2000 and no DPC meeting has been convened to fill these posts. The fact that twenty posts of Deputy Director out of a total of 49 have been upgraded as Joint Director in the pay scale of Rs.3700-5000 (Rs.12000-16500) cannot have any impact on filling up the vacant posts of director after applicants have become eligible for consideration for promotion to the post of Director. Applicant Shri Narnauli, in any case, has been functioning as Director on ad hoc basis since 4.9.2000. As per Government of India's instructions, DPCs have to be convened at regular intervals to draw panels which could be utilised on

making promotion against the vacancies occurring during the course of a year. Regularity in convening DPC meetings for filling up vacancies on promotion has been confirmed by the ratio in the case of Y.V.Rangaiah (supra). Respondents have taken inordinately long time in creating post of Joint Director - an intermediate post between the post of Director and Deputy Director. They have also not yet promulgated any recruitment rules for the post of Joint Director or made any changes in the recruitment rules for the post of Director after acceptance of recommendations of the Fifth CPC. Candidates who have been eligible for further promotions as per existing recruitment rules cannot be made to wait indefinitely so that Government can make changes in the recruitment rules and then convene DPC meetings for new intermediate posts. Applicant Shri Raghunath Singh particularly has come to a harm having already retired on 31.1.2002 waiting for his promotion. The Fifth CPC recommendations were made in 1997. We are deep in the year 2002. The present applicants became eligible for promotion to the post of Director in 1999 but neither the intermediate post of Joint Director has come into existence nor have recruitment rules for the post of Director etc. come into effect.

7. In the facts and circumstances of these cases, in our considered view, the ratios in the cases of Y.V.Rangaiah (supra) and Lalin Kumar Mahto (supra) are squarely applicable here. The recruitment rules which have yet not come into existence will have a prospective effect as and when they come about. Five vacancies of

21

Director which occurred in 1999 will have to be governed by the then existing recruitment rules. Respondents are directed to convene DPC meeting for filling up five posts of Director (Official Language) under the existing recruitment rules to consider, among other eligible candidates, if any, the present applicants who were eligible for promotion to the post of Director in 1999. In case these applicants are found fit for promotion, they should be accorded notional promotion to the post of Director in the grade of Rs.14300-18300 with effect from the dates they became eligible but with actual monetary benefits from 14.3.2001 and 16.4.2001 respectively, when these OAs were filed (OA No.675/2001 was filed on 14.3.2001 and OA No.939/2001 was filed on 16.4.2001). The above exercise should be completed within a period of two months from the communication of these orders and in the meanwhile applicant Shri C.B.Narnauli who has been working on the post of Director on ad hoc basis, should not be reverted.

8. The OA is disposed of in the above terms. No costs.

S. Raju
(Shanker Raju)
Member (J)

/as/

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