

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1405/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 14th day of July, 2000

Shri R.S.Mishra
s/o Late Shri Banaraas Mishra
r/o Flat No.144, Type-IV
Sector-3, Sadiq Nagar
New Delhi - 110 049.
Technical Officer National Afforestation
and ECO-Development Board
Minstry of Environment & Forests
C.G.O.Complex, Lodhi Road
New Delhi - 110 003. Applicant

(By Shri H.K.Gupta, Advocate)

Vs.

1. Secretary
Ministry of Environment & Forests
Paryavaran Bhawan
C.G.O.Complex
Lodhi Road
New Delhi - 110 003.
2. Secretary
Ministry of Personnel
Public Grievances & Pensions
Department of Personnel & Training
North Block
New Delhi - 110 001. Respondents

(None)

O R D E R (Oral)

By Reddy. J.

Heard the counsel for the applicant. None appears for the respondents even on second call. As the matter pertains to 1997, we proceeded to dispose of the matter on the basis of the available pleadings on record in terms of Rule 16 of the CAT (Procedure) Rules, 1987.

2. The applicant is a Technical Officer (Forestry) Group-'B' since 8.12.1988 in the Ministry of Environment and Forests. He holds Masters' Degree in Economics. A vacancy arose in the post of Assistant

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Commissioner (Forestry) since 1.12.1996 in National Afforestation and Echo-Development Board. According to the applicant this was a general category post and that this post shall be filled up by promotion. As per the Recruitment Rules of Ministry of Environment and Forests, Assistant Commissioner (Forestry) Recruitment Rules, 1985, the post of Assistant Commissioner of Forestry was to be filled up (i) 50% by way of promotion failing which by transfer on deputation and failing of both by Direct Recruitment (ii) 50% by transfer on deputation including short-term contract failing which by direct recruitment. The Technical Officers (Forestry) with 8 years service in the grade, are eligible for promotion.

3. The grievance of the applicant is that he was eligible for promotion under the Rules, in the vacancy that arose on 1.12.1996 but the respondents failed to fill up the post though he made several representations in that regard. The present application is therefore filed for the relief directing the respondents to promote the applicant as Assistant Commissioner of Forests w.e.f. 1.12.1996 with all consequential benefits.

4. In the reply it was admitted that the post of AC(F) fell vacant on 1.12.1996 but the respondents narrated the reasons for not filling up of the vacancy and for "kept the post unfilled." In the reply the respondents have stated as under:

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"Before 2.7.97, the vacancy of Assistant Commissioner (Forestry) was reserved for Scheduled Caste category as per the 40 point vacancy based reservation roster. The seniormost (Scheduled Caste) official in the erstwhile grade of Technical Officer which constituted the feeder grade at that time (i.e. as on 1.12.96), however, did not possess the requisite educational qualification i.e. Master's Degree in Economics/Maths/Statistics etc. as laid down in the recruitment rules for promotion to the post. A proposal was, therefore, sent to the Department of Personnel & Training (DOPT) seeking relaxation in educational qualification in favour of the concerned official keeping in view his long experience in the feeder grade.

DOPT informed that a temporary ban had been imposed by DOPT, interalia, on relaxation of Recruitment Rules and advised the Respondent to wait till the said ban was lifted. The said ban continued till May, 1998.

Meanwhile, interalia, the following recommendation of the 5th Central Pay Commission regarding restructuring of the Technical cadre of forestry was accepted by the Government of India:-

- i) The post of Assistant Commissioner (F) carrying Master's Degree in Economics, Statistics or Mathematics as qualification, should be filled entirely by promotion;
- ii) Out of 8 posts of Technical Officer (F) (existing as on date in the old scale of pay of Rs.2000-3500), 3 should be placed in the pay scale of Rs.2500-4000/- and redesignated as Technical Officer Grade-I, and such upgraded post in the category of TO Grade-I should be filled entirely by promotion. The remaining 5 posts may continue in the scale of pay of Rs.2000-3500/- (old).
- iii) Out of 15 posts of Research Investigator (Forestry), with graduate qualification in Economics, Statistics etc., 5 should be upgraded to the scale of Rs.2000-3500 and merged with 5 posts of Technical Officer at that level. These 10 posts of TO in the scale of Rs.2000-3500/- should be redesignated as Technical Officer (Forestry) Grade II and filled 50% by direct recruitment with post-graduate qualification and 50% by promotion.

Pursuant to the acceptance of the above recommendation of the 5th Central Pay Commission by the Government of India, the Respondent restructured the erstwhile grade of Technical Officer(F) as follows:

1. Technical Officer Gd.I 3 posts in the pay scale of Rs.7500-12000/-

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corresponding to old scale of Rs.2500-4000/-

2. Technical Officer Gd.II 15 posts in the pay scale of Rs.6500-10500

corresponding to old scale of Rs.2000-3500

The aforesaid restructuring in the form of TO Grade.I and TO Grade.II substituting the existing Technical Officer (F), came into force from 2.1.98 and from the same date the erstwhile grade of TO(F) became non-existent.

Pursuant to the above re-structuring, the exercise relating to framing/amendment of Recruitment Rules for the post of TO Grade.I and TO Grade.II was initiated by the Respondents and the revised recruitment rules as approved by the DOPT, UPSC and the Ministry of Law are being notified.

With the induction of TO Grade I, the recruitment rules for the post of Asstt. Commissioner (Forestry) had therefore to be amended, interalia, incorporating TO grade I as the feeder grade for the post of AC(F) in place of the erstwhile TO (Forestry) which had since become non-existent. As per the new recruitment rules finalized with the approval of DOPT/UPSC, only Technical Officer (Forestry) Grade I with six years regular service is eligible for promotion to the post of AC(F).

Keeping in view the fact that the aforesaid process of framing of new recruitment rules for the post of To Grade.I/TO Grade.II/Assistant Commissioner (Forestry) including amendment as well, will take considerable time and also to avoid any further delay in filling up the post of Assistant Commissioner (Forestry), the Respondent approached DOPT with the proposal that the officers available in the re-structured set-up i.e., in TO Grade.II, may be considered for being promoted to the post of AC(F) through UPSC, by granting one time relaxation by DOPT to skip residency in the post of TO Grade.I, which was totally a new born set up.

The DOPT advised that since the post of TO(F), which was the feeder grade for promotion to the post of AC(F) has been bifurcated by restructuring, into TO Grade.I and TO Grade.II, the post of AC(F) will have to be filled as per new recruitment rules since the existing recruitment rules have become invalid.

Therefore, the DOPT further advised the Respondent to take urgent steps for framing/amendment of the recruitment rules of various posts.

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The advice/observations of the UPSC are as follows:

"The Ministry of Finance, Department of Expenditure in Notification No.GSR 569(E), dated 30th September, 1997, while approving the revised scale of

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pay mentioned in Col.4 of Part C of the Notification for the post mentioned in Col.2 has stipulated that in certain cases, the scales of pay mentioned in col.4 are subject to fulfilment of certain specific conditions. These conditions relate, interalia, to changes in Recruitment Rules, re-structuring of cadre, re-distribution of posts into higher grade etc. Therefore, in those cases where conditions such as changes in Recruitment Rules etc., which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it would be necessary for the Ministry to decide upon such issues and agree to the changes suggested by the Pay Commission before applying the scales to these posts. In certain other cases, where there are conditions prescribed by the Pay Commission as pre-requisite for grant of these scales to certain posts such as cadre re-structuring, re-distribution of posts etc., it will be necessary for the Ministries/Departments concerned not only to accept these conditions but also implement them before the scales are applied to those posts. It has further been provided in the above Notification that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned post will be governed by the normal replacement scale until then.

The Department of Personnel and Training vide OM No.AB-14017/2/97-Estt. (RRs.), dated 25.05.98 have inter alia laid down that where the 5th Pay Commission have recommended the higher pay scale/re-structuring of cadre etc., pending revision of the Recruitment Rules with reference to the pay scales as approved by the Govt., the existing rules for the lower pay scales may not be operated. The Commission have recently approved the Recruitment Rules for the post of Research Investigator (Forestry), Technical Officer (F) Grade.II and Technical Officer (F) Grade-I consequent on the re-structuring of the technical posts in the Forestry side in the Ministry. A separate proposal for amendment of Recruitment Rules for the post of Assistant Commissioner(F) has also been received from the respondent No.1 (Ministry of Environment & Forests) and the same is under active consideration in this Office.

In view of the foregoing, the UPSC informed that the request of the respondent No.1 for considering promotion to the grade of Assistant Commissioner (Forestry) directly from the grade of Technical Officer (Forestry) Grade II ignoring the immediate lower feeder grade of Technical Officer (F), Grade I can not be acceded to and the same has to await amendment of the Recruitment Rules for the post. In this connection, it is also pointed out that the contention of the Ministry that vacancies arising prior to commencement of the amended Recruitment Rules should be filled in accordance with the pre-amended rules does not hold good in this case since as a matter of policy, the Govt. have accepted the recommendations of the 5th Pay Commission (including higher scales of pay/re-structuring/re-distribution of posts etc.) and it is binding on the Ministries/Departments to amend the Recruitment Rules before applying these scales to those posts."

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As a result, the post of AC(F) could not be filled on the basis of the existing recruitment rules. As already stated, the revised recruitment rules for the post of TO Grade.II/TO Grade.I/Assistant Commissioner (Forestry) have been finalized & being sent to the Govt. Press for being notified in the Gazette. As per the advice of DOPT/UPSC, now the post of AC(F) will be filled in accordance with the proposed amended Recruitment Rules which provide TO Grade.I as the feeder post for promotion to the post of AC(F)."

5. In view of the above reasons it was stated that the post of AC(F) could not be filled on the basis of the existing Recruitment Rules. The revised Recruitment Rules for the post of Technical Officer Grade-II/ Gr.I/Assistant Commissioner (Forestry) have been finalised and were sent to the Government Press for being notified in the Gazette.

6. The learned counsel for the applicant also produced the copy of the recruitment rules for the post of Assistant Commissioner(Forestry) as amended on 18.1.2000, namely, the Ministry of Environment and Forests and Wildlife Assistant Commissioner (Forestry) Recruitment (Amendment) Rules, 1985. He therefore stated that the post would be filled up as per the amended Rules.

7. We have given careful consideration to the contentions raised by the counsel for the applicant and also perused the available pleadings in the OA.

8. The learned counsel for the applicant, now submits that though the post which fell vacant on 1.12.1996 was a reserved post, it was dereserved on 2.7.1997. By that time the erstwhile post of TO(F) which constituted feeder grade for promotion to AC(F),

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has since been re-structured and Technical Officers Grade-I with six years regular service in the feeder grade are only eligible for promotion.

9. Admittedly the applicant is not holding the post TO-Gr.I. In the circumstances, the applicant cannot be promoted to the post of AC(F).

10. The learned counsel for the applicant, however, submits that since the post fell vacant on 1.12.1996, DPC should have been constituted in the next year for the promotion to the post of AC(F) and as the applicant was the only eligible candidate at that time, the applicant was having good chances of promotion. It is also argued that the respondents should have applied the old rules for filling up the post since the post fell vacant on 1.12.1996. The learned counsel also relies upon the instructions issued by the DoPT for periodical holding of the DPC for the purpose of promotion in the existing vacancy. But it should be noticed that the applicant was not eligible for promotion on 1.12.1996 as it was a reserved vacancy and by the time the post ~~ofwas~~ ^{was} dereserved, as stated by the respondents in the counter affidavit, the posts have been restructured and only Technical Officer Grade-I was the feeder cadre for promotion to the post of AC(F), and once the posts have been restructured, it cannot be said that old rules were still to be followed. The respondents have taken all the steps as seen in the counter reply for filling up of the post but in view of the existing

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conditions the same could not be filled up. In the circumstances, it cannot be said that the respondents are guilty of not convening the DPC periodically.

11. The learned counsel for the applicant relies upon 1997 II AD S.C. 80 wherein it was held that preparation and finalisation of the yearly panel is a mandatory requirement but as stated supra the respondents have explained why the post could not be filled up in the year 1996. We have no hesitation to accept the reasons given.

12. We do not,, therefore, find any merit in the OA, the OA is therefore dismissed. No costs.

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(SMT. SHANTA SHAstry)

MEMBER(A)

Em. Rajagopala
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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