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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 681/1999
T.A No.

Date of Decision 9-3-2001

Sh.P.S.Bahl

..Petitioner

Sh.H.B.Mishra

..Advocate for the Petitioner(s)

Versus

Govt.of NCT of Delhi through Respondent
the Chief Secretary and ors

Sh.Rajinder Pandita for ..Advocate for the Respondents
Respondents 1-3.
Sh.M.L.Sharma for R-4

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S.Tampi, Member(A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)

Vice Chairman (J)

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Central Administrative Tribunal
Principal Bench

O.A. 681/1999

New Delhi this the 9 th day of March, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

P.S. Bahl, Inspector (Enforcement),
Transport Department,
Government of National Capital
Territory of Delhi,
5/9, Under Hill Road, Delhi,
R/o 21/39, B. Tilak Nagar,
New Delhi. ... Applicant.

(By Advocate Shri H.B. Mishra)

Versus

1. Government of NCT of Delhi,
through the Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Principal Secretary-cum-Commissioner,
Transport Department of National
Capital Territory of Delhi,
5/9, Under Hill Road, Delhi.
3. Commissioner of Police,
Delhi Police Headquarters,
ITO Building, New Delhi.
4. Shri Kuljit Singh, Enforcement Officer,
Transport Department, Government of
National Capital, Territory of Delhi,
5/9, Under Hill Road, Delhi. ... Respondents.

(By Advocate Shri Rajinder Pandita - for Respondents 1-3)
By Advocate Shri M.L. Sharma - for Respondent 4)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicant has impugned the DPC proceedings held on 27.11.1997 which, according to him, are based on false and wrong details given in the Agenda for consideration of the DPC (Annexure 'A-11') which had been filed by the respondents in the additional affidavit in CP 115/98 in OA 2487/96. He is aggrieved that his case has not been properly considered by the DPC and the respondents have not

given a reply to his representation dated 1.3.1999 and had made all efforts to absorb Respondent 4, as Enforcement Officer (EO) which, according to him, was against the relevant Recruitment Rules which has adversely affected him. Hence, this O.A. in which he has prayed that the relevant records may be called for and be declared that he is eligible and entitled as EO in the Department w.e.f. 22.6.1996 as there was an unreserved vacant post on that date against which he ought to have been considered. He has also prayed that the Agenda papers prepared for the DPC meeting held on 20.11.1997 should also be quashed and set aside and Respondents 1 to 2 be restrained from appointing Respondent 4 regularly as EO.

2. The brief relevant facts of the case are that the applicant joined Delhi Police as Sub-Inspector w.e.f. 29.6.1978. He was sent on deputation to the Transport Department under the Government of NCT on 23.6.1992 and absorbed in that Department as Inspector (Enforcement) in the pay scale of Rs.1640-2900 vide order dated 18.5.1994. According to him, he is the senior most Inspector (Enforcement) in that Department but his case was not considered for further promotion as EO in accordance with the Recruitment Rules notified on 13.7.1959. According to the respondents, the applicant's promotion as EO was not considered by the DPC w.e.f. 22.6.1996 as there was no unreserved vacant post of EO available at that time. However, according to the applicant's counsel, as the applicant was under suspension on contemplated disciplinary proceedings which was finally revoked, he was not considered for promotion.

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3. The applicant had filed OA 2487/96 which was disposed of by Tribunal's order dated 23.7.1997. In Tribunal's order, it was directed that the respondents shall consider the case of the applicant for promotion in accordance with the relevant Rules as on 22.6.1996 and pass appropriate orders. Thereafter, CP 115/98 was filed by the applicant which was dismissed. The applicant has been promoted as EO w.e.f. 15.10.1999. He has also very vehemently submitted that the the nature of the post of EO being a cadre post, the applicant's name ought to have been considered for promotion and as Respondent 4 does not belong to this category, his name could not have been considered at all for the post of EO. He has submitted that Respondent 4 was from the Delhi State Mineral Development Corporation (DSMDC) and had been declared as surplus and at best the Government could have only sent his name to the Surplus Cell and could not have absorbed him in deputation quota as he did not fulfil the eligibility conditions. He has also drawn our attention to paragraph 2 of the Agenda notice for consideration of the DPC held on 20.11.1997 wherein he has submitted that as on 22.6.1996 there was one post of EO reserved for SC category for which also de-reservation had been sought from the competent authority. Learned counsel has very vehemently opposed the appointment of Respondent 4 as EO above the applicant relying on the counter reply filed by the official respondents in another application, (OA 7555/98) filed by one Sarna Nand Sharma, in which they had stated that the present applicant, who was Respondent 3 in that application is senior to Shri Sarna Nand Sharma. He has also contended that Respondent 4 has been declared as Surplus Staff by the DSMDC and he had been deployed/appointed as EO in the pay

scale of Rs.2000-3200 on ad hoc basis for a period of six months by letter dated 5.8.1996. He has, therefore, vehemently contended that under the provisions of law, Respondent 4 could not have been appointed on regular basis in the Transport Department and that too above the applicant as he is senior most Inspector (Enforcement) which is the feeder cadre for consideration for promotion to the post. He has relied on the judgement of the Supreme Court in Roop Lal Vs. Union of India & Ors. (2000(1) SCC 644).

4. In pursuance of the Tribunal's order dated 22.1.2001. Shri Rajinder Pandita, learned counsel for Respondents 1-3 has submitted the relevant departmental records. In that order, the respondents were directed to bring the relevant records dealing with the appointment of Respondent 4 w.e.f. 5.8.1996 and the order, if any, passed by the competent authority regarding de-reservation of the post of EO which had been earlier reserved for SC category in the 50% promotion quota, as referred to in paragraph 3 of the Agenda papers submitted to the DPC held on 20.11.1997. The respondents have submitted that they had appointed Respondent 4 on regular basis as EO in accordance with the provisions of the CCS (Re-deployment of Surplus Staff) Rules, 1990 against the post which was to be filled by direct recruitment, whereas the applicant is seeking appointment on the basis of his seniority in the feeder category against the post which is to be filled by promotion. Respondent 4 in his reply has also made a similar submission and has submitted that, therefore, the applicant has no case for consideration against the post which was filled by deputation/direct recruitment as his
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appointment has not caused any prejudice to the rights of the applicant. Hence, he has submitted that the O.A. is not tenable for misjoinder of parties as Respondent 4 is an unnecessary party, who has been simply dragged into litigation causing him mental distress for which he has prayed that the exemplary costs may be granted to him against the applicant. He has drawn our attention to MA 1170/97 filed by Shri Kuljit Singh in OA 2487/96 praying that his name may be deleted. However, MA was ordered to be listed for hearing along with O.A. for final hearing. Learned counsel has submitted that as in that case the applicant has unnecessarily impleaded Respondent 4 in this case also. The official respondents have also denied that the appointment of Respondent 4 is against the rules or arbitrary or is done in great haste as contended by Shri H.B. Mishra, learned counsel. They have submitted in their reply that there were six sanctioned posts of EO's and under the relevant Recruitment Rules, three posts are in the promotion quota and three posts in deputation quota and they were maintaining separate rosters for both the quotas. They have also controverted the submissions made by the applicant to the contrary and have prayed that the O.A. may be dismissed with costs in their favour at the admission stage.

5. Shri M.L. Sharma, learned counsel for Respondent 4 has submitted that the applicant has already agitated the above issues, namely, his grievance against the appointment of Respondent 4 as EO w.e.f. 22.8.1996 which, he states, is at the cost of the respondent even in the earlier application filed by him (OA 2487/96). He has drawn our attention to the relief prayed for in paragraph 18.

8(d) of that O.A. which was to quash and set aside the appointment of Respondent 5, that is Respondent 4 in the present case which is also the relief prayed for in paragraph 8(d) of the present O.A. Learned counsel has, therefore, submitted that not only Respondent 4 is an unnecessary party but the present application is also vexatious and barred by res judicata and is a gross misuse of the process of law for which he has prayed that exemplary costs may be awarded in his favour. He has submitted that the appointment/redeployment of Respondent 4 has been done strictly within the provisions of the Recruitment Rules and the CCS (Re-deployment of Surplus Staff) Rules, 1990. Shri M.L. Sharma, learned counsel for Respondent 4 has vehemently submitted that there is no clash of interests between the applicant and Respondent 4 as they were to be appointed in different quotas.

6. In the rejoinder, the applicant has in turn reiterated his averments in the O.A.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties and the relevant records submitted by the respondents.

8. The Tribunal by interim order dated 23.3.1999 had restrained the respondents from regularising the services of Respondent 4. Later, after hearing the parties, this order was modified by Tribunal's order dated 27.5.1999 whereby Respondents 1-3 were directed to go ahead with the process of regularisation as per the Rules and the appointment was made subject to the final outcome of the O.A. In this order, the Tribunal had noted the submissions

of Shri H.B. Mishra, learned counsel with regard to his contention that there could be no reserved vacancy as mentioned in the impugned Agenda papers placed before the DPC. The contention of the respondents that the applicant was eligible for promotion to the post of EO only under the departmental promotion quota whereas Respondent 4 is under consideration against deputation/direct recruitment quota and there is no nexus between the two has also been noted. It has further been observed that out of three posts in the promotion quota, two are already filled up and one is vacant. As against the deputation quota, one is filled up and two are vacant. The Tribunal had further observed that the case of the applicant along with others in the feeder grade was considered against the promotion quota but as the post fell in the reserved category and the applicant belongs to the general category, the DPC could not make any recommendation in view of the non-availability of vacancy for the unreserved category. With regard to Respondent 4, he had been appointed/redeployed not against the post to be filled in the promotion quota. Noting these submissions, as mentioned above, the interim order was modified. We reiterate these findings as they are borne out from the documents on record.

9. Respondent 4 had been declared as surplus staff by the DSMDC and he had been redeployed in the Department of Transport from the date of his joining, that is 7.8.1996 by order dated 20.10.1999. In this order, it has been further stated that as he was appointed on a lower pay scale than that he was holding at the time of being declared surplus, he was allowed to carry his current pay scale to the re-deployed post as personal to him. He has

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also been redeployed and transferred to the Department in public interest. We find that these orders of re-deployment and appointment of Respondent 4 in the Transport Department are in accordance with the provisions of the CCS (Redeployment of Surplus Staff) Rules, 1990. Therefore, the vehement contention of Shri H.B. Mishra, learned counsel that these have been done in an arbitrary manner in post haste is baseless and is rejected.

10. It is noted in OA 2487/96 filed by the applicant that he had made the present Respondent 4 as Respondent 5 in that case. The main contention of the applicant in that case was with regard to the suspension order passed against him and later revoked by the official respondents. The Tribunal vide order dated 23.7.1997 has noted that "the only relief now remains is whether the applicant is entitled to be considered for promotion as on 22.6.1996". A direction was given to the respondents to consider the case of the applicant for promotion in accordance with the Rules as on 22.6.1996 and pass appropriate orders. Shri M.L. Sharma, learned counsel for Respondent 4 has submitted a copy of the application filed by the applicant in that case which we have perused. (copy placed on record). In the circumstances of the case, we see merit in the submissions made by Shri M.L. Sharma, learned counsel that the applicant has again prayed for the relief of quashing and setting aside the appointment of Respondent 5/Respondent 4, that is Shri Kuljit Singh. In the circumstances, we find force in his contentions that the applicant is seeking the same relief against respondent 4 and is misusing the process of law.

11. Under the relevant recruitment Rules for the post of EO, two methods of recruitment are provided, namely, 50% by promotion failing which by transfer on deputation and failing both by direct recruitment and 50% by transfer on deputation, failing which direct recruitment. In the case of promotion, it is from the feeder category of Inspector (Enforcement) with four years regular service in the grade and in the case of transfer on deputation, (1) Officers of the Central/State Government/Union Territories/ Police Force holding analogous posts on regular basis or (2) with two years regular service in the scale of Rs.1640-2900 or equivalent; or with the qualifications prescribed in sub-clauses (3) and (4) of Column 12 (Annexure A-5). Having regard to the provisions of the Recruitment Rules for the post of EO, the contention of the respondents that the applicant and Respondent 4 belong to two separate streams for consideration to the post of EO, one falling under the promotion quota and the other under the deputation quota, cannot be assailed. The repeated and vehement contentions of Shri H.B. Mishra, learned counsel to the contrary, cannot, therefore, be accepted. In other words, the applicant was eligible to be considered for promotion to the post of EO under the departmental promotion quota whereas Respondent 4 was to be considered under the deputation failing which direct recruitment quota, as provided under the Recruitment Rules. From the relevant orders issued by the respondents mentioned above, Respondent 4 fulfilled the necessary qualifications prescribed in the Recruitment Rules for being considered for appointment in the deputation quota even though initially he was appointed as EO on ad hoc basis on

5.8.1996 and thereafter given the regular appointment. The action of Respondents 1-3 in appointment of Respondent 4 as EO under separate provisions of the Rules applicable to him is, therefore, legal and valid. The same contentions raised by the applicant in OA 2487/96 have also been raised in the present O.A. The Tribunal vide order dated 23.7.1997 had only given directions with regard to the consideration of the applicant by the DPC w.e.f. 22.6.1996. It is also relevant to note that under the Recruitment Rules for consideration of officers on transfer on deputation basis to the post of EO, persons holding analogous posts on regular basis in the Central/State/Union Territory/Police force are eligible. Therefore, the contention of the learned counsel for the applicant that as Respondent 4 does not belong to the Delhi Police/Police Force, he could not have been considered is again an argument which has to be rejected as contrary to the provisions of the Recruitment Rules.

12. It is also noted from the letter issued by the official respondents dated 9.1.1995 that a decision had been taken to absorb 17 technical staff declared surplus by the DSMDC, including Respondent 4, who was then holding the post of Deputy Manager for whom posts were to be identified in the direct recruitment quota. In the circumstances, the appointment of Respondent 4 in the Department of Transport by the official respondents cannot be held as illegal or invalid. Therefore, looked at from any angle, the applicant's contentions that the appointment of Respondent 4 is illegal and, should be quashed and set aside, that he should have been considered in place of Respondent 4 and placed senior to him are de-hors the rules and accordingly

rejected. The actions taken by Respondents 1-3 in appointment of Respondent 4, under the Rules as EO are legal and valid and the applicant cannot, therefore, repeatedly raise the same contentions again which he had already raised in OA 2487/96. This is also in accordance with the Minutes of the meeting held by the respondents on 2.2.1995. In the facts and circumstances of the case, we see merit in the submissions made by Shri M.L. Sharma, learned counsel that the applicant has misused the process of law by vexatious litigation against the respondent 4 who has been unnecessarily dragged into litigations.

13. Another ground taken by the learned counsel for the applicant is that the respondents could not have reserved one post for SC category on 22.6.1996, and he should have been accordingly considered for promotion with effect from that date. It is noted from the relevant records submitted by the respondents that in the reply dated 26.10.1998 given to the Department's letter dated 29.7.1997 requesting for de-reservation of the post of EO, they have asked the Department to prepare the roster as per the relevant Instructions dated 2.7.1997. The relevant portion of this letter reads as follows:

"With reference to your letter No. F.5.(45)/93/Admn./Tpt./5728 dated 29.7.97 on the subject cited above, I am directed to say that vacancy based rosters have been replaced by the post based roster vide instructions of Govt. of India OM No. 36012/2/2/96-Estt.(Res.) dated 2.7.97 on the subject matter duly circulated by this department vide letter No. 19/11/97/S.III/ dated 16.7.97. However, the vacancy position in roster shown in your above referred letter are not according to the new post based roster. You are therefore, requested to prepare the roster as per the instructions dated 2.7.97 on the subject matter, which are self explanatory".

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What action, if any, has been taken by the respondents on the above matter has not been placed on record. To this extent, we see merit in the claim of the applicant that he has not been properly considered by the DPC held on 20.11.1997 against the third post falling in the promotion quota for which he is eligible to be considered in accordance with the Recruitment Rules. In paragraph 3 of the Agenda note itself, they have mentioned that "it appears there is no reservation on any of the above mentioned posts". No reasons have been given as to why corrective action has not been taken by the official respondents to review or reconsider the case of the eligible candidates in the light of the reply received by them as far back as 26.10.1998. This is not justified on their part. In this view of the matter, the application partly succeeds so far as the official respondents are concerned.

14. In the result, for the reasons given above, the application is disposed of as follows:

(i) Respondents 1-3 are directed to reconsider the matter regarding whether the post of EO which fell vacant on 22.6.1996 is a reserved ^{post} ~~vacancy~~ or not, in terms of the relevant Instructions/law. In case the post is not a reserved post and falls under the general category, they shall hold a review DPC to consider the eligible candidates, including the applicant, subject to their fulfilment of the conditions laid down under the Rules at the

relevant date. This shall be done within three months from the date of receipt of a copy of this order.

(ii) Taking into account the particular facts and circumstances of the case, Respondents 1-3 are directed to pay cost of Rs.2000/- (Rupees Two Thousand) to the applicant; and the applicant is directed to pay cost of Rs.4000/- (Rupees Four Thousand) in favour of Respondent 4.

(Govindan S. Tampli)
Member(A)
'SRD'

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)