

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA.No.1656 of 1998

New Delhi, this 4th day of June, 1999.

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HON'BLE SHRI S.R. ADIGE, VICE CHAIRMAN(A)
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J)

A. Bandyopadhyay
R/o D-II/A-2492
Netaji Nagar, New Delhi-23 ... Applicant

By Advocate: Shri V.S.R. Krishna

versus

Union of India, through

1. The Secretary
Department of SSI & ARI
Ministry of Industry
Government of India
Udyog Bhawan
New Delhi.
2. The Development Commissioner
Small Scale Industries
Small Industries Development Organisation
Department of SSI & ARI
Ministry of Industry
Government of India
Nirman Bhawan
New Delhi.
3. Shri P.P. Malhotra
Director (TUD)
Department of Science & Industrial Research
Ministry of Science & Technology
Technology Bhawan
New Delhi.

... Respondents

By Advocate: Shri D.S. Mahendru and
Shri C.L. Kumar.

O R D E R

HON'BLE SHRI S.R. ADIGE, VC(A) :

Applicant impugns respondents order dated
27.7.98 (Annexure A-1) based upon the DPC's
recommendation dated 25.6.98, offering the post of
Industrial Advisor (Electronics) to Respondent No.3

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and seeks convening of a fresh DPC to consider applicant's case for promotion to that post, and to promote him if the DPC's recommendation are in his favour.

2. The Recruitment Rules for the post of Industrial Advisor (Electronics) are at Annexure A-II. The method of recruitment is by promotion failing which by promotion on deputation and failing both by direct recruitment. Column.11 of the Rules make clear that Director(Gr.I) in Electronics/Electrical Divisions with 5 years service in the grade are eligible for promotion..

3. The post of Industrial Advisor(Electronics) fell vacant on 1.3.98. The DPC met on 25.6.98 and admittedly considered applicant as well as Respondent No.3. It recommended Respondent No.3 for the post, against which this OA has been filed.

4. In support of the OA it has been ~~contended~~^{for} that Respondent No.3 had been approved/the post of Director(TUD) as a direct recruit on the basis of an open advertisement, and having been selected as Director (TUD) after resigning from the office of Respondent organisation, which resignation was duly accepted by them, ^{argued} it has been ~~contended~~ that Respondent No.3 thereby severed his connection with

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Respondent organisation and is hence no longer in the feeder cadre of Industrial Advisor (Electronics) and hence could not have been considered by the DPC (Annexure-III).

5. We note that in response to the advertisement issued by Department of Scientific & Industrial Research for a post of Director (Technology Utilisation Division). Respondent No.3 applied for the post and was selected. The OM dated 11.3.96 (Annexure-A IV) offering him the post of Director (TUD) makes it clear that the appointment was on adhoc basis and the appointee would be on probation for one year from the date of adhoc appointment, and permanent absorption would be considered in accordance with rules in force by Industry Ministry order dated 9.5.96 (page 18 of the OA), ^{Respondent No 3} ~~applicant~~ was released from the post of Director (Electronics) in the office of DC(SSI) with effect from 10.5.96 to enable him to join as Director (TUD), and was allowed to retain his lien in Small Industries Development Organisation for two years as admissible. We are informed that this lien has been further extended.

6. Applicant's counsel Shri Krishna has asserted that as Respondent No.3 was appointed as Director(TUD) against an open advertisement and was not sent on deputation, he now belongs to the cadre of Deptt. of Science & Industrial Research and not

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Small Industries Development Organisation, and therefore could not have been considered for promotion as Industrial Advisor (Electronics). Shri Krishna has argued that retention of lien by ^{Respondent No 3} ~~applicant~~ in Small Industries Development Organisation only gives him a right to revert back to his old Department and nothing more. According to him it does not give him a right to be considered for further promotion, and in this connection states that para 17.4.2. of the guidelines for the conduct of DPCs contained in O.M. dated 10.4.89 in Swamy's Compilation on Seniority and Promotion relates only to officers on deputation and not to officers like applicant who went to Department of Scientific & Industrial Research as a direct recruit.

7. We are unable to agree with this submission. Admittedly applicant does possess the qualifications of Director Grade.I in Electronics/Electrical Divisions with five years service in the grade. No doubt when the post of Industrial Advisor (Electronics) fell vacant in Small Industries Development Organisation on 1.3.98 ^{Respondent No 3} ~~applicant~~ was working as Director (TUD) in Department of Scientific & Industrial Research where he had been appointed on ad hoc basis pursuant to a selection through direct recruitment, but ^{Respondent No 3} ~~applicant~~ still retained his lien in Small Industries Development Organisation and nothing has been shown to us to establish that he had submitted his resignation

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from Small Industries Development Organisation as
contended by applicant. By virtue of holding lien
in Small Industries Development Organisation ^{Respondent No 3} ~~applicant~~
had an enforceable legal right to hold substantively the
post of Director(Electronics) in Small Industries
Development Organisation and thereby to be considered
for promotion to the higher post of Industrial Advisor
(Electronics) if he possessed the necessary qualification
which admittedly he did. Merely because he was appointed
in Department of Scientific & Industrial Research as
Director (TUD) on ad hoc basis to a post to which he
had been selected pursuant to an advertisement for
direct recruitment, cannot deprive him from consideration
for promotion in his parent organisation where he holds
a lien. Shri Krishna has stated that as the
probationary period of one year had expired, applicant
must be declared to have been absorbed as Director (TUD)
but the appointment offer letter itself states that
permanent absorption would be considered in accordance
with rules in force. In other words, there has to be
a positive act of absorption, but nothing has been shown
to us to establish that Respondent No.3 was indeed
absorbed in Department of Scientific & Industrial Research
by the exercise of any such positive decision in
accordance with the rules in force.

8. It is true that respondents were required
to act in accordance with the guidelines contained
in para 17.4. 2 of DP & T's O.M. dated 10.4.89
but merely because respondents did not

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not recall ^{Respondent No 3 to} ~~applicant~~ Small Industries Development Organisation before the DPC met to consider promotion to the post of Industrial Advisor (Electronic) cannot deprive him of his enforceable legal right to be considered, he having a lien in Small Industries Development Organisation and being otherwise eligible for consideration as per Recruitment Rules.

9. Applicant's counsel has relied upon the CAT Bangalore Bench order dated 8.10.93 in K.S.Majali & Ors. Vs. UOI & Ors.-1994(26) ATC 414 in support of his arguments, but that order has not discussed the definition of the word 'lien' occurring in FR 9(13) which reads thus

" 'Lien' means the title of a Govt. servant to hold substantively, either immediately or on the termination of a period or period of absence, a permanent post, including a tenure post, to which he has been appointed substantively."

Clearly therefore if ^{Respondent No 3} ~~applicant~~ by virtue of holding lien, had the title to hold substantively the post of Director (Electronic) in SIDC while posted on adhoc basis as Director (TUD), he had an enforceable legal right to be promoted in the cadre where he holds lien. The order in Majali's case (supra) therefore must be treated as per incuriam.

10. Under the circumstances, the OA is devoid of merit and is dismissed. No costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).