

Central Administrative Tribunal
Principal Bench

O.A. No. 2218 of 1998

New Delhi, dated this the 27 September, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, MEMBER (J)

Dr. S.K. Chopra,
Senior Adviser,
Ministry of Non-Conventional Energy Sources,
Block No. 14, CGO Complex,
Lodhi Road,
New Delhi-110003. .. Applicant

(By Advocate: Shri B.N. Singhvi, Sr. Counsel
with Shri S. Chopra & Shri V.K. Garg)

Versus

1. Union of India through
the Secretary,
Ministry of Non-Conventional Energy
Sources,
Block No. 14, CGO Complex,
Lodhi Road, New Delhi-110003.
2. Planning Commission,
Yojna Bhawan, Parliament Street,
New Delhi through its Member Secretary.
3. The Secretary,
Ministry of Personnel, Public Grievances
& Pensions,
Dept. of Personnel & Training,
New Delhi.
4. The Cabinet Secretary,
Government of India,
New Delhi.
5. The Secretary,
Ministry of Non-Conventional Energy Sources,
Block No. 14, CGO Complex,
Lodhi Road,
New Delhi-110003. .. Respondents

(By Advocate: Shri K.C.D. Gangwani)

ORDER

MR. S.R. ADIGE, VC (A)

Applicant impugns respondents O.M. dated
28.6.96 (Annexure I) and dated 12.2.98 (Annexure II).
He seeks a declaration that he has a lien in the
Planning Commission and that his transfer to the post

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of Adviser which was transferred by the Planning Commission to the Ministry of Non-Conventional Energy Sources (MNES) is not a permanent absorption in that Ministry. He seeks a direction to Respondent No.2 that he be considered for promotion as Principal Adviser in Planning Commission and in the event that it is held that applicant has lost his lien in Planning Commission upon being transferred to MNES, quash and set aside impugned order dated 12.2.98 and consider his case for the post of Secretary, MNES or upgrade his post of Sr. Adviser to that of Secretary/ Principal Adviser in MNES.

2. Applicant's case is that being a ^{highly} qualified person, he was holding a lucrative job in U.S.A., when around 1981 he was specially requested to be a consultant to the Planning Commission in the field of Energy and was so appointed on a consolidated fee of Rs.2500/- p.m., and thereafter he was appointed as a whole time non-official consultant in the Planning Commission on a fee of Rs.3000/- p.m. Upon the need for creating a full fledged post of Adviser (Rural Energy) in Planning Commission being felt, the said post was created on 5.6.84 and applicant was appointed to the aforesaid post in the pay scale of Rs.2500-3000 vide Notification dated 5.6.84 (Annexure IV colly.), initially on ad hoc basis for one year w.e.f. 21.1.84, and thereafter substantively w.e.f. 17.6.84, vide Notification dated

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16.2.87 (Annexure IV colly.). Applicant states that since it was an isolated post with a particular specialisation, he was treated as a specialist.

3. Meanwhile respondents had framed the Planning Commission Adviser (Rural Energy) Recruitment Rules, 1985 (Annexure V) which applicant claims are still in existence.

4. Subsequently by Notification dated 4.11.92 (Annexure VI) applicant was appointed as Adviser (Rural Energy) in the higher grade of Rs.7300-7600 as personal to him. Applicant states that this grade is equivalent to the grade of Additional Secretary in Government of India under the Central Staffing Pattern.

5. Applicant states further that having spent about 10 years in Planning Commission, the next available promotional post was that of Principal Adviser which is equivalent to a Secretary in other Ministries, and it is likely that he would have been so promoted, had he not been transferred to MNES as Sr. Adviser, without his consent vide order dated 31.3.94 (Annexure VII). Applicant states that he immediately represented against the transfer on 31.3.94 to the Dy. Chairman, Planning Commission, but he did not receive any reply. Meanwhile he complied with the order dated 31.3.94. Thereafter he made a further representation to Dy. Chairman, Planning Commission on 7.3.96 (Annexure VIII) for being taken back in Planning Commission and was

informed vide Memo dated 28.6.96 that his representation had been forwarded, but was subsequently informed that since there was no post in Planning Commission against which his lien could be retained, his request for being taken back could not be acceded to.

6. Applicant states that thereupon he represented to the Cabinet Secretary on 26.8.96 (Annexure IX) for empanelling him as Additional Secretary and then consider him for appointment as Secretary, MNES which post was vacant on 1.9.96, but he received no reply to the same. Thereupon he filed O.A. No. 2213/96, but before that O.A. could be taken up for hearing, an appointment to the post of Secretary, MNES was made on 9.10.96. That O.A. was disposed of by order dated 26.11.97 (Annexure X) with a direction to respondents to dispose of applicant's representation dated 26.8.96 in consultation with the concerned authorities and in accordance with rules and instructions, giving liberty to applicant that if any grievance still survived it would be open to applicant to agitate the same through appropriate original proceedings in accordance with law, if so advised.

7. Applicant states that pursuant to the aforesaid order dated 9.10.96 respondents have issued impugned O.M. dated 12.2.98 rejecting his representation, giving rise to the present O.A.

8. Respondents in their reply challenge the O.A. They state that applicant was appointed to the post of Adviser (RE) in Planning Commission on the basis of the Recruitment Rules prevailing at that time viz. Planning Commision Adviser (RE) Recruitment Rules, 1985 (Annexure R-1) which were subsequently superceded by the Planning Commission (Advisers) Recruitment Rules, 1988 notified on 13.9.88 which was subsequently deleted by Notification dated 2.2.95 (Annexure R-II). It is further stated that the post of Adviser (RE) to which applicant was appointed substantively is an isolated post belonging to General Central Service in the pay scale of Rs.5900-7300 (Rs.18400-22400 revised) and he holds a lien on that post. As per Government of India's decision applicant was accorded in situ promotion in the pay scale of Rs.7300-7600 (Rs.22400-24500) on 4.11.92 as personal to him and it does not confer ^{upon} him the status of an Additional Secretary. Respondents contend that applicant has a lien on the post of Adviser (RE) in Government and not in Planning Commission. it is stated that the work of IREP which was under applicant's supervision in his capacity as Adviser (RE), was transferred to MNES by Government of India in public interest and under Article 77 of the Constitution the Government of India (Allocation of Business) Rules, 1961 were also amended accordingly vide Notification dated 3.4.94 (Annexure R-III). Respondents deny that applicant's consent was required before the IREP along with his services and that of other supporting staff were transferred from Planning Commission to

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MNES. They also deny that it is a case of deputation and stoutly contend that it is a case of transfer along with the post. They state that applicant was appointed to an isolated post and the appointment was given only in terms of the extant instructions of Government of India. Hence there is no question for violation of any condition of service relating to further promotion. Respondents submit that chances of promotion are not a condition of service. As applicant was not appointed to any ^{organised} ~~selected~~ service in Government of India, he has no right for promotion or being considered for promotion. Respondents emphasise that applicant has no enforceable legal right of consideration for promotion to the post of Secretary. It is stated that the post of Secretary in any Ministry is not a promotion post and Secretaries are appointed by a method of selection for which a separate procedure has been laid down in the Central Staffing Scheme.

9. Applicant has filed a rejoinder in which he has contested respondents averments and broadly reiterated his.

10. We have heard applicant's Shri B.N. Singhvi and respondents' counsel Shri K.CD Gangwani. We have perused the materials on record and given the matter our careful consideration.

11. In this connection we note that it is on the initiation of the then Minister of State, MNES vide his letter dated 11.5.93 (copy on record)

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addressed to Dy. Chairman, Planning Commission that the subject of IREP which had been conceived, designed and developed in Planning Commission was transferred to MNES. In that letter the MOS specifically requested that applicant's services be transferred to MNES as he had been responsible for developing the programme. Furthermore after noting that applicant was already an Adviser in the grade of Additional Secretary, the MOS stated that necessary steps would be taken to have applicant designated as Additional Secretary in MNES. Respondent have filed an additional affidavit on 26.6.2000 stating that in December 1993 they considered the question of empanelment/ appointment as Additional Secretary/grant of ~~ex-officio~~ ^{status} as Additional Secretary to applicant while holding the post of Adviser, but had not approved it. It is also stated that applicant has not been considered for Secretary level empanelment. Furthermore the 1988 Recruitment Rules in MNES for the post of Adviser have been annexed (Annexure R-1) which includes one post of Adviser (Energy) to be filled by promotion/transfer on deputation (including short term contract) failing which by direct recruitment. In case of transfer/transfer on deputation officers of Central Government etc. holding analogous posts in the scale of Rs.7300-7600 (pre-revised) are eligible. This post of Adviser (Energy) is in the scale of Rs.7300-7600 (pre-revised).

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12. There is merit in respondents' contention that applicant's lien is on a post and not in a Department/Ministry. Applicant admittedly has a lien on the post of Adviser (RE) which was earlier in the Planning Commission, but was subsequently transferred along with applicant's services to MNES. We find that the Planning Commission Adviser (RE) Recruitment Rules, 1985 which were subsequently superceded by the 1988 Rules have been subsequently deleted by Notification dated 2.2.95. In other words the post of Adviser (RE) is no longer ~~on~~ the rolls of the Planning Commission, and even the Transaction of Business Rules have been amended by a Presidential Notification such that the IREP is now a subject matter of Ministry of Non-conventional Energy Sources and not the Planning Commission. As applicant's lien on the post of Adviser (RE) continues, there was no legal necessity to consult him, or obtain his option before the post of Adviser (RE) was transferred along with applicant's services to MNES. In this connection reliance has been placed by applicant's counsel on the Hon'ble Supreme Court's ruling in Jawahar Lal Nehru University Vs. J.S. Jawatkar AIR 1989 SC 1577. That case related to the transfer of the services of a person from one University to another. That ruling would, however, not have any application to the facts and circumstances of the present case, because universities are autonomous bodies, while the Planning Commission and MNES are units of a single entity viz the Government of India.

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13. In this connection we have already noted that MNES has its own Recruitment Rules for the post of Adviser (Energy) in the scale of Rs.7300-7600 (pre-revised).

14. With the transfer of the post of Adviser (RE) along with the services of applicant from Planning Commission to MNES, it is not possible for us to declare that applicant does not stand permanently absorbed in MNES. In that view of the matter, applicant cannot be considered for upgradation as Principal Adviser in Planning Commission (emphasis supplied) unless respondents themselves decide in the public interest to transfer the post of Adviser (RE) along with applicant's services back to Planning Commission.

15. Furthermore Para 3 of the Central Staffing Scheme outline in DP&T's O.M. dated 5.1.96 (Annexure R-11) provides that all posts of the rank of Under Secretary and above in Government of India are filled under the Central Staffing scheme by borrowing officers from the All India Service and participating Group 'A' services, except those which are specifically encadred within the organised Group 'A' services or are filled by recruitment through UPSC or are filled in accordance with concerned C.C.S. rules. As the post of Secretary, MNES, or for that matter any other post of Secretary,

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Government of India does not fall within any of those exceptions it would follow that applicant not being a member of an All India Service or a participating Group 'A' service has not enforceable legal right to claim consideration for appointment as Secretary, MNES under the Central Staffing Scheme in the light of the contents of aforesaid O.M. dated 5.1.96.

16. There is, however, one aspect of the matter we would like to refer to.

17. Admittedly applicant was granted the higher scale of Rs.7300-7600 (pre-revised) as personal to him w.e.f. 4.11.92 and will be completing 8 years in that scale in less than 1 1/2 months from now. He was born in 1947 and is 53 years of age at present. In other words he still has seven years of service ahead of him before he retires on superannuation at the age of 60 years. In the event that no higher pay scale is sanctioned to him, he will have continued in the existing pay scale of Rs.7300-7600/Rs.22500-24500 right from 1992 till 2007 that is a period of 15 years, with no career progression.

18. We are fully aware that the emoluments attached to a post are linked directly with its duties and responsibilities but it is not respondents' case that the duties and responsibilities of the post of Adviser (Rural

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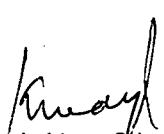
Energy) have remained static since 1992. Indeed having regard to the emphasis being given to the design and development of alternative, cost, effective, fuel efficient and environment friendly sources of energy, it cannot be so. While increase in emoluments attached to a post has no doubt to be justified on grounds of public interest, it also cannot be denied that Government is expected to act as a model employer, and in doing so has to pay due heed to the morale and motivation of its employees and not permit them to stagnate. The Hon'ble Supreme Court has itself in several judgments has observed that adequate avenues for career progression are an important ingredient in motivating Government employees, to enable the best to be got out from them in the public interest. Continuing to retain applicant in the same scale of Rs.7300-7600/Rs.22500-24500 from 1992 onwards for 15 years till he eventually retires on superannuation on attaining the age of 60 years in 2007 can hardly be said to be conducive to his motivation.

19. In this connection we note that when the post of Adviser (RE) was in Planning Commission and as per Planning Commission Adviser (Rural Energy) Recruitment Rules the scale of the post was Rs.5900-6700 (pre-revised) respondents had not evinced any difficulty in granting applicant the higher scale of Rs.7300-7600/Rs.22500-24500 as being personal to applicant. Under the circumstances, if

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now the MNES Recruitment Rules prescribe that the post of Adviser (RE) will be in the scale of Rs.7300-7600/Rs.22500-24500 respondents, prima facie should not face any legal difficulty in sanctioning applicant a scale higher than Rs.7300-7600/Rs.22500-24500 as personal to applicant so that he does not stagnate.

20. In the light of the foregoing discussion we hold that this is a fit case to direct respondents to consider granting applicant a scale higher than the one he is presently in, namely Rs.22500-24500 (revised). We direct accordingly and call upon respondents to effect such consideration in accordance with rules and instructions as expeditiously as possible and preferably within six months from the date of receipt of a copy of this order. No costs.


(Kuldip Singh)

Member (J)


(S.R. Adige)
Vice Chairman (A)

/GK/