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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 535/1998

New Delhi this the 17th day of July, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

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

Vijay Kumar Sambhor
S/O R.D.Sambhor,
R/O 65/4-C, Kali Bari Marg,
New Delhi.

... Applicant

(By Shri George Paracken, Advocate)

-Versus-

1. Union of India through
Secretary, Ministry of
Urban Affairs & Employment,
Nirman Bhawan, New Delhi.

2. Controller of Publications,
Department of Publications,
Civil Lines, Delhi-54.

3. Chairman,
Union Public Service Commission,
Dholpur House, New Delhi.

4. Director,
Ministry of Personnel,
Department of Personnel &
Training, Public Grievances
& Pension,
New Delhi.

... Respondents

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

O R D E R (ORAL)

Shri V.K.Majotra, AM :

Applicant is aggrieved by a memorandum dated 4.3.1997 whereby respondents have rejected his request for promotion to the post of Deputy Controller (Publications) in the Department of Publications, Ministry of Urban Affairs and Employment (Annexure-A).

2. According to applicant, he joined the Department of Publications in May, 1986 where he has rendered nearly 14 years of regular service in the

grade of Rs.2000-3500 which is in the grade of Assistant Controller (Publications). Applicant claims to be the seniormost Assistant Controller (Publications). As the post of Deputy Controller (Publications) has been lying vacant since April, 1988, applicant claims his consideration for promotion to the post of Deputy Controller (Publications).

3. A set of recruitment rules were framed in 1963 when the three wings of Publication, Printing and Stationery were under the Chief Controller of Printing and Stationery. The Publications side was headed by Manager of Publications. There was no post of Deputy Controller (Publications) at that time. With effect from 1.3.1973, the office of the Chief Controller of Printing and Stationery was ~~b~~^{b tr} bifurcated and Department of Publications became a separate subordinate office. This Department was headed by the Controller of Publications in the scale of Rs.1100-1800 vested with all powers of a head of department. It was also envisaged that the Controller of Publications would exercise all the powers hitherto exercised by the Chief Controller of Printing and Stationery. Five Posts of Assistant Controller (Publications) in the then scale of Rs.650-1200 and two posts of Deputy Controller (Publications) in the scale of Rs.1100-1600 were placed with the Department. The recruitment rules for Controller of Publications were notified vide GSR No.470 dated 3.4.1975. In these rules in column 10, "Method of Recruitment whether by direct recruitment or by promotion or by deputation or transfer and percentage of vacancies to be filled by various methods", it was stated, "By promotion/ transfer on deputation, selection being made in

consultation with the Union Public Service Commission." Applicant has alleged that the post of Controller is filled up always by transfer on deputation without ever resorting to promotion. As regards the post of Deputy Controller (Publications) no separate and independent recruitment rules were framed. By GSR 2824 dated 14.11.1975, the entry in the 1963 rules "Manager of Publications" had been replaced by another entry, "A Deputy Controller of Publications". According to applicant, up to 1985 there was no serious problem faced by the Department of Publications as officers in combined seniority list of Assistant Controller (Stationery)/Assistant Controller (Publications)/Assistant Manager (Admn.) were getting promoted as Deputy Controllers in both the departments on the basis of their seniority. The problem, however, started after 1985. There were only five Assistant Controllers (Stationery) against sanctioned strength of nine posts. All the posts except one were outside Delhi and they already had the promotional avenue of three posts of Deputy Controller (Stationery) at Calcutta available to them. A stage came when Assistant Controller (Stationery) were either not eligible or were not interested to be posted as Deputy Controller (Publications) in Delhi. In any case, keeping only five officers as total strength of feeder cadre for five posts of Deputy Controllers was totally inconsistent with the guidelines of the Department of Personnel. Revision of recruitment rules was contemplated. As per the proposed revised recruitment rules for promotion to the post of Deputy Controller (Publications) which were approved by the Department of Personnel and Ministry of Law after consultations with the UPSC, an

Assistant Controller (Publications)/Assistant Manager (Admn.) with eight years of regular service in the grade were to be made eligible. Applicant became entitled to his promotion as Deputy Controller (Publications) on October, 1991. According to the said recruitment rules, the first method for recruitment to the post of Controller on regular basis was promotion of Deputy Controller with five years of service in the grade. The proposed recruitment rules were withdrawn from the UPSC by the Controller citing a writ petition in connection with winding up of Department of Stationery at Calcutta as the reason.

4. According to applicant, his promotion based on approved position became due w.e.f. October, 1991 when he completed eight years of regular service in the grade of Rs.2000-3500 when both the posts of Deputy Controllers were vacant and available. However, applicant still continues to work in the same scale and post even six years after his promotion became due. The two posts of Deputy Controller of Publications have been long vacant since 1985 and 1988 respectively. Applicant has alleged that on Ministry's direction that the finalisation of revised recruitment rules for the post of Deputy controller (Publications) be done without loss of time, the Controller took up the matter directly with the UPSC in 1994 and surreptitiously removed the clause under which Assistant Controller (Publications)/Assistant Manager (Admn.) with eight years of service were made eligible for promotion to the post of Deputy Controller (Publications) - an addition which was per force made after years of deliberations in order to enlarge the feeder cadre so that the required number

of officers could be made available. This was done without taking approval of the Ministry of Law and the Department of Personnel and also without taking any clearance from the Ministry of Urban Affairs. The anomaly regarding having separate recruitment rules for Deputy Controller (Stationery) and Deputy Controller (Publications) in violation of the finalisation by the UPSC in the notification dated 15.12.1994 was considered a serious lapse even by the UPSC.

5. Respondent No.1 has taken the stand that according to the existing recruitment rules Assistant Controller (Stationery) with seven years regular service in the grade failing which eight years combined service in the grades of Assistant Controller (Stationery) and Assistant Controller (Publications)/ Assistant Manager (Admn.) only are entitled for promotion to the post of Deputy Controller (Stationery). Since applicant had no service as Assistant Controller (Stationery) he was not found eligible to be considered for promotion as Deputy Controller (Publications). Applicant has sought a declaration that for the post of Deputy controller (Publications), Assistant Controller (Publications) with eight years regular service is eligible for consideration as in the case of other comparable posts, and also a direction to respondents 1 and 2 to consider applicant for promotion to the post of Deputy Controller (Publications) taking into account the fact that applicant has already completed eight years of regular service in the present grade and to appoint him as Deputy Controller (Publications) from the date he became eligible with all consequential benefits.

6. As per the counter reply of respondents, applicant has admittedly rendered about 12 years of service as Assistant Controller (Publications). According to respondents, as per order dated 6.1.1973 regarding re-organisation of the earstwhile Printing & Stationery Department one post of Deputy Controller (Publications) was created along with some other posts at that time. Even in the amended rules of 1975, out of three posts of Deputy Controllers in the Government of India Stationery Office only one post of Deputy Controller (Stationery) finds mention. Even after 1985 there were nine posts of Assistant Controllers (Stationery) for which the post of Assistant Manager (Admn.)/Assistant Controller (Publications) were eligible for promotion. According to respondents, they have been filling up the post of Controller in accordance with the prevailing recruitment rules with the approval of the competent authority. After long deliberations, the UPSC approved the following provisions in September, 1991 for eligibility for promotion to the post of Deputy Controller (Publications)/(Stationery) :

"Assistant Controller (Stationery) with 7 years regular service in the grade, failing which 8 years combined regular service in the grade of Assistant Controller (Stationery) and Assistant Controller (Publications)/Assistant Manager (Admn.)."

7. Respondents have contradicted the claim of applicant that he had been assigned the function and responsibilities of Deputy Controller (Publications). Completion of eight years of service in the grade of Rs.2000-3500 would not make applicant eligible for the

post of Deputy Controller (Publications). According to respondents, in October, 1991 applicant even did not complete eight years of service as Assistant Controller (Publications) as he had joined the post in 1986. As per the existing recruitment rules only the Assistant Controllers (Stationery) are eligible for promotion to the post of Deputy Controller (Publications). Out of the two posts of Deputy Controllers (Publications) one was abolished and the other had gone under deemed abolition as it remained unfilled for more than a year. However, the post was revived with the approval of the competent authority. In view of the fact that the revised recruitment rules as approved by the UPSC in February, 1997 could not be notified in view of the ban imposed by the Government which has since been lifted, orders were issued appointing one Shri V. Madhavan, Assistant Controller (Stationery) as Deputy Controller (Publications) on ad hoc basis. Since he did not join the post, orders were issued on 14.5.1998 for filling up of the post on purely ad hoc basis by appointing one Shri Har Gopal, Assistant Controller (Stationery).

8. We have heard the learned counsel and gone through the available material on record. The learned counsel for applicant stated that the post of Deputy Controller (Publications) has been kept unfilled for several years so that applicant who is eligible does not get promotion on the same ~~when~~ ^{and it} the post is filled up by deputation. Under the existing rules, applicant would become eligible if he worked even for a day in the Printing Department. He was transferred to Calcutta in the Printing Department which transfer orders were stayed by the High Court. An attempt was

made to revise the recruitment rules which have not been finalised till date. In the process, at the moment there are no recruitment rules for the post of Deputy Controller (Publications).

9. the learned counsel for respondents contended that unless applicant acquires eligibility by working as Assistant Controller (Stationery) he cannot be considered for promotion to the post of Deputy Controller (Publications). Such a post for applicant exists in Calcutta. However, applicant has not availed of the opportunity of working as Assistant Controller (Stationery) at Calcutta till date. The learned counsel for respondents also clarified that the revised recruitment rules would be notified at the earliest.

10. After hearing the learned counsel on both sides and evaluating the material produced by both sides on record, we find that whereas the revised recruitment rules of the Department of Publications have not yet been finalised and published, applicant is not eligible, in the present circumstances, for consideration for promotion to the post of Deputy controller (Publications), having not worked as Assistant Controller (Stationery). He can still acquire eligibility in case he offers himself to work as Assistant Controller (Stationery) at Calcutta.

11. In the circumstances of the case as the recruitment rules of the post of Deputy Controller (Publications) have not yet been revised and applicant is not eligible for consideration for the post of Deputy controller (Publications) in the existing

circumstances, he cannot be provided any relief. However, the learned counsel for respondents has stated that the amended rules are ready for notification and publication. Once these amended rules are revised and published and applicant is held to be eligible under its provisions, he will certainly be considered by respondents for promotion to the post of Deputy Controller (Publications).

12. The learned counsel for respondents also stated that applicant is eligible for receiving benefits under the scheme of Assured Career Progression in case he is found fit by the screening committee. In the meanwhile, he also stated that applicant's claim under the aforesaid scheme would be considered expeditiously.

13. In this view of the matter, the O.A. is disposed but without any order as to costs.

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

Ashok Agarwal
(Ashok Agarwal)
Chairman

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