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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O. A. No. 56 of 1998

New Delhi: this the 15th day of July, 1998.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri J. S. Mann,
Project Director,
Ministry of Agriculture,
Department of Agriculture and Cooperation
(Fertiliser Division)
at present posted as

OSD to MOS for Water Resources,
Sharan Shakti Bhawan,
Rafi Marg,
New Delhi

..... Applicant.

(Applicant in person)

Versus

1. Union of India,
through Secretary,
Ministry of Agriculture,
(Department of Agriculture and
Cooperation) Krishi Bhawan,
New Delhi.
 2. Union Public Service Commission
through its Secretary, Chelapur House,
New Delhi.
 3. Ministry of Agriculture,
(Department of Agriculture and
Cooperation), Krishi Bhawan,
New Delhi.
through Secretary,
Ministry of Agriculture (Department of
Agriculture and Cooperation),
New Delhi
- Respondents.

(By Advocate: Shri Gajender Giri)

JUDGMENT

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

A applicant seeks a direction to Respondents to issue him the appointment letter for the post of Joint Commissioner (Fertilizer Technical) on the basis of the selection held by UPSC .

2. Consequent to the deputation of the regular incumbent to the post of Joint Commissioner
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(F.T.) Dr. M. R. Motsara as Addl. Commissioner (SWC Division), the post of Joint Commissioner (F.T.) fell vacant. Admittedly as per the Recruitment Rules which were relevant on the date of the vacancy (copy on record) the said post has to be filled by promotion, failing which by transfer on deputation (including short term contract) and failing both by direct recruitment. It however appears that without exhausting the first method i.e. of promotion, respondents advertised the aforesaid post in the Employment News dated 11-17 May, 1996 to be filled on transfer on deputation basis. Applicant along with some other eligible officers applied for the post. Respondent No.2 (UPSC) asked him to appear for a personal talk (interview) on 7.7.97. Applicant states that he appeared before UPSC that day and claims that his performance was excellent, but complains that upon representations being filed by Dr. Motsara and three others, Respondent No.3 is not issuing the appointment letter to applicant, although the post of Joint Commissioner (F.T.) is lying vacant since September, 1997.

3. Respondents in their reply contest the OA and state that while processing the UPSC's recommendation representations were received and it was noted that the selection of applicant made by UPSC for appointment to the post of Joint Commissioner (FT) on deputation basis was erroneous, as the full facts were not made known to UPSC earlier. In view of this it was decided after obtaining approval of competent authority that UPSC may be requested to

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convene OPC for filling up the post on promotion basis as per the RRs prevalent in February, 1996 i.e. the time of occurrence of the vacancy. Accordingly UPSC was requested on 19.9.97 to reconsider the matter and convey its decision.

4. We have heard the applicant who argued his case in person, and Shri Giri accompanied by Departmental Representative Shri Khan, Asstt. for the respondents.

5. Manifestly the posts of Joint Commissioner (F.T.) has to be filled in accordance with the RRs, which have the protection of Article 309 of the Constitution. As per the RRs prevalent at the time of the occurrence of the vacancy, the post has to be filled by promotion, and only if that method fails must the second method viz. transfer on deputation be resorted to. Without even attempting the first method i.e. by promotion, respondents should not have initiated action to fill the post by the second method viz. transfer on deputation. The fact that the permanent incumbent Dr. Motsara had himself been deputed to work as Addl. Commissioner (SUC Division) does not change this legal position. Perhaps if a little more care had been devoted by respondents at the initial stage, applicant's hopes would not have been thus raised unnecessarily.

6. Be that as it may we are unable to direct respondents to issue the appointment letter to applicant as he would have. We wish, because if we did so, we would be violating the RRs. We have

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no alternative but to dismiss the OA. No costs.

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

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

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