

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1691/1995

New Delhi, this 3rd day of December, 2002

Hon'ble Shri M.P. Singh, Member (A)
Hon'ble Shri Shanker Raju, Member(J)

Dr. V.Sethuraman
c/o Mrs. C.Vasanthakumari Chelliah
XVIII, High Court Chambers
Chennai-600 104 .. Applicant

(Shri A.E.Chelliah, Sr. Counsel with
Mrs. C. Vasanthakumari Chelliah, Advocate)

versus

Union of India, thorough

1. Secretary
Department of Animal Husbandry &
Dairying, Krishi Bhavan, New Delhi
2. Cabinet Secretary
Rashtrapati Bhavan, New Delhi
3. Secretary
Union Public Service Commission
New Delhi
4. Secretary
Department of Personall & Public
Grievances, North Block
New Delhi
5. Dr. K.R.Viswanathan
Deputy Commissioner (ICDP)
575, Sector III
R.K.Puram, New Delhi .. Respondents

(Shri H.K. Gangwani, Advocate)

ORDER

Shri Shanker Raju, Member(J)

At the outset, we are constrained to record here that the present OA is not maintainable under Rule 10 of CAT (Procedure) Rules, 1987 inasmuch as the applicant has sought multiple reliefs, which are not co-related to each other, inasmuch as he has sought a direction to the official respondents to cancel the steps taken by them to fill up the post of Joint Commissioner (Livestock Health Surveillance) {JC(LHS), for short} in the office of first respondent, direction to amend the recruitment rules for the post JC(LHS) and a further direction to respondents

to consider his ad hoc service in the post of Regional Officer for four years enabling him to get promotion to the next higher grade.

2. For the purpose of proper understanding and adjudication thereof of the case, we would discuss the brief facts, as claimed by the applicant, as follows. Applicant, who was employed in the State Service of Tamil Nadu w.e.f. 12.1.62 to 15.12.76, joined the Central Government Service as Animal Quarantine Officer (AQO) in the office of first respondent in December, 1976. He was thereafter promoted as Regional Officer (Animal Quarantine) in the same department initially on ad hoc basis w.e.f. 18.1.83 and regularised as such w.e.f. 27.8.1987. As per the R/Rules, the post of JC(LHS), which was created in the year 1982 and for which the applicant claims promotion, is to be filled by promotion/transfer on deputation from amongst officers of the Central/State Govt. etc. holding (i) analogous posts, or (ii) with 3/5 years service in the scale of pay Rs.3700-5000/3000-5000 or equivalent respectively and possessing the following educational qualifications and experience etc.

(i) Degree in Veterinary Science or Animal Husbandry of a recognised University or equivalent;

(ii) Post Graduate degree in any branch of Veterinary Science related to Livestock Health discipline from a recognised University or equivalent; and

(iii) 12 years experience in a supervisory capacity in animal disease or investigation.

(b) Departmental Deputy Commissioner (Livestock Health) with 3 years regular service in the grade will also be considered and in case he is selected for appointment to the post the same shall be deemed to have been filled by promotion.

3. It is stated by the applicant that the post of RO is an isolated one and DoPT has directed various Ministries to have the isolated posts included in one of the organised services wherever the duties of the posts have relevance to those of the services in which it is proposed to be encadred. According to him, he comes within the category of 'analogous' or 'equivalent post' having more than 5 years service in the scale of Rs.3000-4500. Also the duties and responsibilities attached to the posts of RO and JC(LHS) are comparable to each other. In this connection he has referred to the judgement of Ernakulam Bench of the Tribunal in the case of G.Hassan Manikfan Vs. Govt. of India 1993(3) SLJ (CAT) 71 wherein it has been held that "even if the applicant did not satisfy the condition of holding a post carrying the pay scale of Rs.3000-4500 for five years, if it is established that the applicant was holding analogous post on the date on which he applied for selection, irrespective of the length of service he should be considered eligible".

4. In response to the vacancy circular for the post of JC(LHS) in the year 1994, applicant also had submitted his application. This was followed by representations dated 4.7.1994 and 16.8.1994. However, UPSC had called Respondent No.5 for personal talk on 24.3.95 ignoring the claim of applicant. He submitted representation on 28.3.95 requesting R-1 to consider his ad hoc service as RO for the post of JC(LHS) but without success. Applicant retired from service in the year 1997. The grievance of the applicant is that inspite of his possessing higher qualifications of Ph.D (Veterinary Medicine) and experience of 18 years, he was not called

for personal talk by UPSC and R-5 who was not eligible for the post in question was called for personal talk by the UPSC held on 24.3.95. That is how he is before this Tribunal seeking the aforesaid reliefs.

5. Respondents have contested the OA and have stated in their reply that there are some isolated which do not have promotional avenues. The Department has been taking an overall and integrated view of all isolated posts for possible encadrement, but this process takes a long time as it requires consultation with various organisations like DoPT, Ministry of Finance, UPSC, ICAR, Ministry of Education etc. In spite of this, one of the guidelines prescribed by DoPT has already been fulfilled by amending the R/Rules for the post of RO(AQ) making the post promotional post in the respondent-department. It is stated by them that the applicant was appointed as RO in the year 1983 on ad hoc basis as a stop gap arrangement and he continued as such till 1987 when he was regularised. His ad hoc appointment does not confer upon him any right to be regularised. Respondents have denied that the post of RO is an isolated post. As per DoPT guidelines, a post can be considered for encadrement as a feeder post only to the next higher post. The prayer of the applicant that the post of RO (Rs.3000-4500) should be encadred as feeder post to the post of JC(LHS) in the scale of Rs.4100-5300 - which incidentally is three levels higher the intermediate scales being Rs.3000-5000 and Rs.3700-5000 is not maintainable. Applicant had got two promotions and one deputation to a higher post i.e. Deputy Commissioner (Epidemiology) in the pay scale of Rs.3700-5000, in the department in a span of 18 years. It is stated by the respondents that the duties of the

34

post of RO as given by the applicant is not authentic. Respondents have attached a list of duties attached to the post of RO at Annexure R-2 which are different to those as claimed by the applicant. The post of RO(AQ) in the scale of Rs.3000-4500 is equivalent to that of AC in the Livestock Health Unit working under the administrative control of DC(Livestock Health) and JC(LHS) and therefore the post of RO(AQ) cannot be considered as equivalent to the post of JC(LHS) on the basis of duties and responsibilities. Besides, the post of RO(AQ) cannot be considered as analogous to the post carrying pay scale of Rs.3000-5000 as per Ministry of Finance notification dated 13.8.1987. Even for appointment of a post carrying scale of Rs.3000-5000, two years service in the scale of Rs.3000-4500 is a minimum requirement as per DoPT guidelines. Even if the ad hoc service of the applicant between 1983 and 1987 were to be treated as regular service, still he did not qualify to apply for the post of JC(LHS) as he did not possess a minimum of 3 years service in the scale of Rs.3700-5000 as prescribed in the R/Rules. Respondents have also stated that the judgement of Ernakulam Bench (supra) is not applicable to applicant's case.

6. As regards norms for calling for interview for the post of JC(LHS), it is contended that the same come under the purview of the UPSC which is a constitutional body set up under the Constitution of India. Respondent-department duly forwarded the application of applicant along with others. UPSC is the final authority to decide whether the candidate is eligible to be called for interview or not. UPSC has recommended the name of Dr.K.R.Viswanathan for appointment to the post of JC(LHS)

on transfer on deputation basis and the department had already submitted a proposal to the competent authority for approval. Dr. Viswanathan has held the post of DC (LD), Department of Rural Development from January, 1989 to May, 1990. He had held various assignments under the Indian Army from October, 1978 to January, 1985 essentially concerned with livestock disease control and investigation. He joined R-1 department in February, 1985 and he had held the post of AC(ED), DC (Livestock Development) and DC (Intensive Cattle Development Programme), the nature of duties being development of cattle with animal disease control as one of the component. In view of these submissions, the OA is devoid of merit and be dismissed.

7. Reply is also filed on behalf of R-5 to the effect that applicant does not fulfil the essential qualifications and experience for the post of JC(LHS). Reply by R-5 is almost on the same lines as that of official respondents and therefore it does not need more elaboration.

8. We have heard the learned counsel for the parties and considered the pleadings.

9. The main grounds taken by the learned counsel for the applicant during the course of the arguments are that had R-1 initiated steps to encadre isolated posts in the field in terms of DoPT guidelines, applicant would have better promotional avenues much earlier, applicant has been discriminated against other ineligible officers in the matter of deputation/promotion and that R-1 had

36

delayed the task of encadrement of isolated posts in order not to give the benefit of encadrement to the applicant.

10. On the other hand, respondents counsel would contend that respondent-department had already fulfilled one of the conditions of DoPT in respect of the post held by applicant by amending the R/Rules for the post of RO(AQ) making that a promotional post. The applicant was not appointed to an isolated post having no promotional avenue. There was no discrimination against the applicant as alleged. Selection of R-5 to the post of JC(LHS) was done by UPSC after considering the suitability of all applicants for the said post.

11. We have already opined that the present OA is not maintainable as the applicant has sought multiple reliefs. However, after carefully rummaging through the material available before us we find that respondent-department has already initiated action to encadre isolated posts and had amended the R/Rules for the post of RO(AQ) in terms of DoPT guidelines in consultation with various nodal ministries/departments. As far as applicant's allegation that he was ignored by UPSC by not calling him for personal talk but it had called R-5 for personal talk, it is settled legal position that the Tribunal cannot substitute itself in place of the selection committee and make selection as if the Tribunal itself was exercising the powers of selection committee. Also whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection committee which

invariably consists of experts on the subject relevant to the selection. Decisions of the academic authorities should not ordinarily be interfered with by the Tribunal. We are informed across the bar that R-5 who was recommended by UPSC and later on appointed to the post of JC(LHS) has since retired from service on 30.11.97. Therefore no useful purpose can be served at this stage to cancel his selection at this stage. Also we cannot give any direction to the official respondents to amend or frame R/Rules for any post as it is for the executive to take a decision as R/Rules are always framed under Article 309 of the Constitution of India in consultation with various Ministries/department and keeping in view various factors.

12. In the result, for the reasons recorded above, we find no merit in the present OA and the same is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

M.P. Singh
(M.P. Singh)
Member(A)

/gtv/