

Central Administrative Tribunal
Principal Bench

O.A. 357/95

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New Delhi this the 1st day of May, 1998.

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

1. S.K. Chauhan,
S/o Shri Gian Singh,
R/o 972, Sector-7,
Pushpa Vihar,
New Delhi.
2. Thomas Verghese,
S/o Shri verghese Chacko,
R/o J&K 213 - B,
Dilshad Garden,
Delhi.
3. Narendra Singh,
S/o Shri Ganpat Ram,
R/o H.No. 446, Sector-6,
Bahadurgarh.

... Applicants.

By Advocate Shri A.K. Behera.

Versus

1. Comptroller & Auditor General
of India,
10, Bahadur Shah Zafar Marg,
New Delhi.
2. Secretary,
Ministry of Finance,
Department of Expenditure,
North Block,
New Delhi.
3. Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
North Block,
New Delhi.

... Respondents.

By Advocate Shri M.K. Gupta.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The three applicants have filed this application alleging that the respondents are following an arbitrary practice whereby persons brought on deputation basis as Administrative Officer (A.O) and Senior Administrative Officer (S.A.O) are allowed to continue for long periods ranging from

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4-16 years in contravention of the Recruitment Rules for the said posts as well as the instructions of the Government of India on the question of deputation period.

2. During the time of hearing, learned counsel for the respondents submitted that applicants 1 and 3 have since been promoted as A.Os. which facts have been confirmed by the applicants' counsel. The grievance of applicant No. 2, however, survives. The Indian Audit and Accounts Department (Headquarters-Office) (Group 'B') Recruitment Rules which are the relevant rules, provides that for promotion to the post of A.O., it is 10% by promotion failing which by transfer on deputation and 90% by transfer on deputation. Column 11, of the Schedule to the Rules further provides that the method of recruitment is on the basis of the percentage of the vacancies to be filled by various methods. The applicants have alleged that according to the rules, 5 years of combined regular service as Assistant Administrative Officer/Section Officer, including 2 years' experience working in field office, is required for promotion to the post of Administrative Officer. They have submitted that although the applicants had the necessary qualifications and were eligible for promotion to the grade of A.O. w.e.f. 21.1.1994, 14.8.1994 and 24.8.1994 respectively, they were not given promotions. They have submitted that in the case of persons brought on deputation basis, the period of deputation should not ordinarily exceed three years but in actual fact the deputationists are allowed to continue as deputationists much beyond that period. They have, therefore, submitted that non-repatriation of the deputationists is against the recruitment rules and also prejudicial to the interest of the promotee officers as no vacancy arises due to their non-repatriation.

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(X) Corrected as per order
in RA 115/98 in OA
357/95 dtg. 3/7/98.

13/7/98

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3. The respondents in their reply, have submitted that deputation on transfer which is referred to in the recruitment rules, is not deputation of officers who get any deputation allowance but persons who are actually on deputation from the field office of the department or similar organisations under the Government of India. The learned counsel has, therefore, submitted that this is not the normal case of deputationists who get deputation allowances. They have, however, not denied that the deputationists have been continued for a number of years over decades. They have also stated that the applicants have no right for promotion but only for consideration for promotion for which they can be considered against the 10% vacancies reserved for them. They have stated that they are maintaining a roster post-wise but not vacancy-wise i.e. to say that a deputationist is appointed against a vacancy of a deputationist and a promotee against that of a post vacated by a promotee so that the quota of 10% and 90% of the vacancies is maintained in the running roster. They rely on R.K. Sabharwal Vs. State of Punjab (1995 SC (SLJ) 330).

4. In the rejoinder filed by the applicants, they have submitted that every time a deputationist is repatriated, a vacancy occurs in the grade of A.O. and the more number of times the vacancies arise in the grade of Administrative Officer the more number of occasions would arise for the applicants to be considered for promotion to the grade of Administrative Officer. They have submitted that in the present case all the present ~~128~~ Administrative Officers/Senior Administrative Officers have been allowed to continue as deputationists much beyond the prescribed period

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in the statutory rules and the administrative instructions which is illegal and prejudicial to their being considered for promotion. They have relied on Ashok Kumar Vs. Union of India and Ors. (1995(2) SCC 745).

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. In the first instance under the relevant Recruitment Rules, 1989 it is clearly mentioned that the method of recruitment, whether by direct recruitment or by deputation or transfer, is a percentage of the vacancies to be filled by various methods. The contention of the learned counsel for the respondents that they are maintaining a roster on the basis of posts reserved for deputationists or promotees and not vacancy-wise is, therefore, contrary to the provisions of the Recruitment Rules. The judgement of the Supreme Court in Sabharwal's case (supra) will, therefore, not assist them, which principles have been laid down in the context of reservations for Scheduled Castes and Scheduled Tribes. The next question is whether persons taken on transfer by deputation in the 90% quota reserved for them can be continued for much longer periods than the period of three years prescribed in the rules and instructions, is also answered in the negative. The recruitment rules provide that ordinarily the period of deputation shall not exceed three years. Under the DOP&T O.M. dated 5.1.1994 the tenure of deputation is prescribed as subject to a maximum of three years in all cases except for those posts where a longer period of tenure is prescribed in the recruitment rules. For any extension beyond this limit, upto one year or the fifth year, as the case may be, the approval of the competent authority has to be

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obtained. No such approval has been placed on record, and the allegations made by the applicant have not been denied by the respondents that some of the deputationists have been retained in the posts for more than 16 years without any break. Therefore, on this ground also the application is entitled to succeed as the respondents have failed to comply with the provisions of the recruitment rules as well as the administrative instructions on extension of the period of deputation. The fact that these deputationists do not receive any deputation allowance during the period of deputation will not materially affect the position.

7. As mentioned above, the applicants 1 and 3 have already been promoted as A.Os during the pendency of this O.A. In the result, this O.A. is, allowed in respect of applicant No.2. Respondents are directed to review the position regarding retention of the deputationists for periods in excess of three years and pass appropriate orders in accordance with the rules and instructions and repatriate, if necessary, those who have completed the maximum period of deputation, within three months from the date of receipt of a copy of this order. Thereafter, they shall consider the case of applicant No.2 for promotion as A.O. in the resultant vacancies and pass appropriate orders in accordance with the recruitment rules. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member (J)

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

'SRD'