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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 123/1996

New Delhi, this the 23rd day of May, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri V.K. Majotra, Member(A)

R.S. Sisodia
S/o Shri N.S. Sisodia
Assistant Commissioner (Fisheries)
Dept. of Animal Husbandry & Dairying
Krishi Bhawan, New Delhi.
R/O A-39, Pandara Road
New Delhi .. Applicant
(Applicant in person)

versus

Union of India, through

1. Secretary
Dept. of Animal Husbandry & Dairying
Ministry of Agriculture
Krishi Bhawan, New Delhi
2. Shri J.P.S. Mehrotra
Deputy Commissioner (Fisheries)
Dept. of Animal Husbandry & Dairying
Ministry of Agriculture
Krishi Bhawan, New Delhi
3. Shri G.D. Chandrapal
Deputy Commissioner (Fisheries)
Dept. of Animal Husbandry & Dairying
Ministry of Agriculture
Krishi Bhawan, New Delhi .. Respondents

ORDER

Justice V.S. Aggarwal

The applicant was aggrieved by an order dated 4.12.1995 whereby, respondents 2 and 3 had been promoted from the posts of Assistant Commissioner (Fisheries) to those of Deputy Commissioner (Fisheries) on temporary and ad hoc basis from 8.11.1995 and 17.11.1995 respectively. The applicant has asserted that he joined as Assistant Commissioner (Refrigeration) in the department of Agriculture and Cooperation. According to him, there is

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no difference in the nature of duties of the post occupied by him and those occupied by respondents 2 and 3. The applicant thus has a better claim for appointment to the post of Deputy Commissioner (Fisheries) as compared to respondents 2 and 3. He had claimed his seniority in this regard. He filed an application seeking a direction to respondent No.1 to convene a review Departmental Promotion Committee meeting to consider his case also for promotion to the post of Deputy Commissioner (Fisheries) with retrospective effect and consequential benefits.

2. The respondents had contested the application and pleaded that as per the recruitment rules applicable to the post of Deputy Commissioner (Fisheries), only Assistant Commissioners (Fisheries) are eligible as a feeder post. The applicant is an Assistant Commissioner (Refrigeration) which is not a feeder post for consideration for promotion to the post of Deputy Commissioner (Fisheries).

3. When this matter had earlier come up for hearing before this Tribunal on 18.1.2000 on behalf of the respondents, this Tribunal was informed that the department had taken a decision that the post of Assistant Commissioner (Refrigeration) will be included as a feeder post for the post of Deputy Commissioner (FVC and Engineering). This Tribunal noted that they understand by this decision that the respondents are willing to consider the applicant for one of the posts of

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Deputy Commissioner. The original application was disposed of with a direction that the respondents will hold a review Departmental Promotion Committee meeting to consider the case of the applicant for promotion against one of the posts of Deputy Commissioner. If the applicant is found fit for such promotion, he would be promoted from the same date as respondents 2 and 3 i.e. 19.2.1996 and will be treated senior to them..

4. As against the same, the respondents had preferred a Civil Writ Petition No.3829/2000 which was decided by the Delhi High Court on 30.9.2002. The order passed by this Tribunal was quashed and set aside and the Delhi High Court held:-

"10. The question, which arises for consideration, is as to whether the respondent herein fulfils the requisite criteria for being promoted to the post of Deputy Commissioner (Fisheries). Despite the fact that concessions have been made, we feel, in the event it is held that the Recruitment Rules still survive and had not become obsolete wherein qualifications are prescribed, the case of the petitioner could not have been considered.

11. The learned counsel appearing on behalf of the respondent placed before us certain documents to show that the respondent had been described as Assistant Commissioner (Fisheries) but despite such documents, we are of the opinion that in the event it be held that the Recruitment Rules are still operative, the same would not change the legal position. For the purpose of recruitment to a particular post, the minimum educational qualification prescribed therefore must be fulfilled. Such minimum educational qualification is prescribed having regard to nature of the job required to be performed by the concerned employee. A candidate may otherwise be highly qualified or he may have sufficient experience, but once the minimum educational qualification is laid down by reason of a statutory rule, the same cannot be given a go-bye."

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It is in this back-drop that the matter as such had been re-heard.

5. The narration of facts referred to above clearly show that what was stated at the Bar before this Tribunal when the earlier application was disposed of is not significant. In fact, such a statement is not being made. In this back-drop, we are proposing to consider the merits of the matter.

6. The recruitment rules for the post of Deputy Commissioner (Inland Fisheries) were brought to our notice. The qualifications had been prescribed for such a post in column 8 of the said recruitment rules. The same are:-

"Essential:

(i) Master's degree in Zoology from a recognised University or equivalent, or Associate Diploma in Fisheries Science of Central Institute of Fisheries Education, Bombay.

(ii) 10 years' experience of fisheries development or research work on problems relating to fisheries including legislation and trade on fisheries economics, evaluation and planning.

Note 1: Qualifications are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified.

Note 2: The qualification regarding experience is relaxable at the discretion of the Union Public Service Commission in case of candidates belonging to the Scheduled Castes and Scheduled Tribes, if at any stage of selection, the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.

Desirable: Doctorate Degree in Zoology."

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Admittedly, the applicant does not hold the Master's degree in Zoology. Once the applicant does not hold the Master's degree in Zoology, it must follow that he does not possess the minimum educational qualification to be considered as eligible for being promoted to the post of Deputy Commissioner. Even if the applicant was given the charge of Assistant Commissioner (Fisheries), that would not make him eligible as such. No person can claim a right to be promoted de hors the recruitment rules.

7. It is true that it further prescribes that even if a person does not hold a Master's degree in Zoology, he should have equivalent degree in this regard. The equivalence has to be determined keeping in view the nature of the duties and the syllabus of the degree. There has to be an order passed by the concerned Ministry. No such order had been passed or shown to us to prompt us to state that the applicant was eligible for the said post and in that view of the matter, it must follow that the applicant was not eligible.

8. Note 1 of the educational qualifications prescribes that the same are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified. Such a relaxation, therefore, can only be considered by the appropriate authority as referred to above.



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9. Resultantly, in the absence of any other argument, we dismiss the present application reiterating that if the applicant is so advised, he may seek relaxation and the appropriate authority can consider the said request in accordance with law.

V.K.Majotra

(V.K. Majotra)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

/sns/