

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 1718 / 96
P.A. No.

20

DATE OF DECISION 10-12-1997

Bhagat Ram & others Applicant(s)
(By Advocate Shri B.B. Raval)


Versus

Union of India & others Respondent(s)

(By Advocate Shri N.S. Mehta)

(For Instructions)

1. Whether it be referred to the Reporter or not? YES
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO


(C.D.S. A. Vedavalli)

Member (J)

10-12-1997

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1718/96

New Delhi this the 10th day of December, 1997.

Hon'ble Dr. A. Vedavalli, Member (J)

Hon'ble Mr. R.K. Ahooja, Member (A)

1. Bhagat Ram,
S/o Late Shri Kartara Ram,
R/o House No.315, Block 'D',
Pocket 16, Sector III,
Rohini, Delhi.
2. A.R. Bhardwaj,
S/o Shri B.K. Bhardwaj,
R/o A.R.C. Sarsawa,
Distt. Saharanpur (UP).
3. J.K. Jain,
S/o late Shri M.L. Jain,
R/o C-3/188, Sector 31,
Noida (UP).
4. V.K. Naithani,
S/o Shri S.P. Naithani,
R/o B-4/140,
Vasundhara Enclave,
Delhi.
5. R.S. Chauhan,
S/o Shri N.S. Chauhan,
R/o Quarter No.1493,
Sector IV, Pushpa Vihar,
M.B. Road, New Delhi.
6. A.K. Garg,
S/o Shri R.K. Garg,
R/o H.146, Second Floor,
Ashok Vihar, Phase-I,
Delhi.
7. Shailander Kumar,
S/o late Shri Nand Kishore,
R/o House No.1200,
Lodhi Road Complex,
New Delhi.

...Applicants

(By Advocate Shri B.B. Raval)

-Versus-

1. Union of India through
the Cabinet Secretary,
Government of India,
Rashtrapati Bhawan,
New Delhi-110001.
2. The Director General (Security),
Cabinet Secretariat,
Block V (East),
R.K. Puram,
New Delhi-110066.

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3. The Director,
Aviation Research Centre,
Cabinet Secretariat,
Government of India,
Block V (East),
R.K. Puram,
New Delhi-110066.

(By Advocate Shri N.S. Mehta)

4. Shri B.B. Mishra (IPS),
Assistant Director,
Aviation Research Centre,
Cabinet Secretariat,
C/o Respondent No.3.
5. Shri A.K. Sinha,
Dy. Central Intelligence Officer,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi.

C/o The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi.

...Respondents

(None for respondents No.4 & 5)

ORDER

HON'BLE DR. A. VEDAVALLI, MEMBER (J):

The seven applicants, who are employed as Senior Field Officers in the Aviation Research Centre, (ARC for short) Director General of Security (Cabinet Secretariat), Government of India, are aggrieved by their non promotion to the post of Assistant Director in the ARC/SFF (Executive) cadre. They have impugned memo No.A-20013/72(1)/Estt.(ARC)-II dated 19.3.96, rejecting the representation of applicant No.1 (Annexure A) and memo No.ARC/Genl/76/96 dated 20.9.96 (Annexure B copy) rejecting the representations submitted by all the seven applicants in this O.A.

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2. The facts of this case, briefly stated, are as under.

3. The ARC was established as a temporary department in 1963. Its staff were taken on deputation from various Ministries and Departments of Government of India as per the requirements. Most of the staff were taken from the Intelligence Bureau on transfer basis. When the Directorate General became a permanent department its own recruitment rules for ARC/SFF (Executive) Service were framed in 1976. The applicants joined the ARC as Deputy Field Officers (General) on various dates from the years 1976-1981, as mentioned in the O.A. They were later promoted as Field Officers and Senior Field Officers. They are seeking promotion to the post of Assistant Director in the ARC.

4. The applicants have sought the following reliefs, briefly stated, in this OA:

- i) Quashing of the impugned orders at Annexures A and B (colly) rejecting their representations.
- ii) Consequent to the above relief being granted, a direction to the respondents to promote the eligible applicants to the post of Assistant Director from due date with consequential benefits.
- iii) Order for immediate repatriation of Shri B.B. Mishra, IPS (respondent No.4).
- iv) Declaration that the induction of Shri A.K. Sinha (respondent No.5) is illegal.
- v) Costs etc.

5. The O.A. is contested by the official respondents No.1-3, who have filed their counter. The private respondents (Nos.4&5) have not filed any reply in spite of the

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service of notice on them. The applicants filed their rejoinder to the counter-affidavit filed by the official respondents.

6. Re the main ground as to discrimination and violation of fundamental rights on the basis of which the impugned orders are sought to be quashed, learned counsel for the applicants at the outset drew our attention to the provisions of column 7 & 8 of the Schedule to the amended recruitment rules (Annexure A-1). The said provisions are reproduced below:-

(7)

"Promotion - 50%
Deputation/Transfer-
50%
If any of the method
fails, then by
increasing the
percentage proposed
for the other method.

(8)

Promotion of Senior Field
Officers with 6 years' service
in the grade.

Deputation of:-

- (a) IPS Officers holding the rank of Asstt. Director/Supdt. of Police or officers eligible for appointment to such posts in the State/Cen. Govt. offices; and
- (b) Technical officers and Senior Field Officers (Chinese)/Asstt. Foreign Language Examiners (Chinese) having 6 years service in the grade on promotion basis;
- (c) Any officers of the rank of Lt. Colonel."

The learned counsel for the applicants submitted that in the event of one method of recruitment failing, recourse will be taken to the second method automatically as per the aforesaid rules. He argued that though initially there might have been a logical justification for having a provision at the inception stage of the department to import trained officers from other organisation like IB/State Police

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working in various Ministries/departments out of necessity, there is no justification for such import after the Directorate started functioning independently and its own cadre grew up in strength and more than two decades have already passed after the promulgation of the said rules. He further submitted that in some of the cadres in the ARC Directorate the post of Assistant Director is filled up 100% by promotion. While so, the respondents have kept several posts in the transfer/deputation quota vacant for several years instead of resorting to the alternative method of promotion for the reasons best known to them. He submitted that in the circumstances, the applicants when they became eligible for being promoted to the post of Assistant Director, felt neglected and were aggrieved by such inaction and indifferent attitude of the respondents which is violative of their fundamental rights under Articles 14, 16 and 21 of the Constitution. Several verbal and personal representations to Senior Officers were made by the applicants and they had also submitted written representations which were rejected by the impugned orders at Annexures A and B colly. It is contended by the learned counsel that such rejection is bald, non-speaking and violative of the fundamental rights and the orders are liable to be quashed as prayed for.

7. The learned counsel for the respondents in reply to the above submissions and contentions of the learned counsel for the applicants submitted that the ARC/SFF (Executive) cadre is a common cadre belonging to different Directorates, i.e., ARC and SFF involving different types of delicate operational work and suitable officers from the sources enumerated in the relevant provisions of the aforesaid rules, extracted supra, are taken on deputation as per the

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essential requirements and needs of the Directorate. Moreover, the post of Assistant Director in question is a selection post and as the things stand now there is no failure of the system of deputation. Further maximum promotional avenues to the directly recruited employees of the cadre are provided under the rules. He further submitted that the applicants are not at all affected due to the existing provision of deputation and that there is no discrimination or violation of their fundamental rights under Articles 14, 16 and 21 of the Constitution. Moreover, the impugned orders are well considered and reasoned orders and it is not correct to say that they are bald and non-speaking. O.A., therefore, according to him, is misconceived and deserves to be dismissed.

8. We have heard the learned counsel for both parties and have perused the pleadings and other material papers placed on record. We notice that the relevant rules at Annexure A-1 are known as ARC/SFF (Executive) Service Amendment Rules, 1988. As per the provisions of the relevant Schedule to the said rules regarding the method of recruitment to the post of Assistant Director in the said service, extracted supra, 50% of the posts are to be filled up by promotion and 50% by deputation/transfer. It is, therefore, obvious that there is equal number of posts for promotees and deputationists. It is only in the event of failure of any one of the above two modes that the increase in percentage of the posts to be filled up by other method would arise for consideration by the respondents. The said Rules in toto or the aforesaid provisions in the Schedule to the rules are not impugned as such by the applicants. They have also not been able to establish any discrimination in the filling up of the

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posts in their own promotion quota of 50%. They have also not been able to refute with supporting material the stand of the official respondents that there is no failure of the deputation method even if there are a few vacancies in the deputation quota post. We, therefore, find that the ground of discrimination and violation of fundamental rights under Articles 14, 16 and 21 of the Constitution is neither valid nor tenable in law, we, therefore, reject the same.

9. Re the challenge to the impugned orders at Annexures A and B colly as being invalid on the ground that they are bald and non-speaking we have perused the said orders carefully.

10. The impugned orders dated 19.3.96 (Annexure A) relates to a request dated 16.2.96 for promotion to the post of Assistant Director in the ARC/SFF (Executive) cadre by applicant No.1 (Bhagat Ram SFO) at Annexure A-2. His grievance mainly pertains to his non consideration to the post of Assistant Director in the cadre even after completing the requisite eligibility criteria for promotion to the said post. He has also alleged in the said representation that there is a failure of the deputation method regarding filling up of the vacancies in the said quota for the reasons stated therein.

11. We find that even though the respondents in the aforesaid impugned order at Annexure A have stated in para 2 thereof that after examining in detail and being shown to the Director ARC the point in the said representation have to be summarily held to be devoid of merit, it had been stated in para 3 of the said order that the case of applicant No.1 was duly considered by the DPC on earlier occasions and will also

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be put up to DPC whenever the next vacancy in the promotion quota occurs. In the aforesaid facts and circumstances we are of the view that the impugned order cannot strictly be termed as bald and non speaking and in fact there is, inter alia, an assurance to applicant No.1 that his case will be put up to DPC for consideration at the appropriate time. We, therefore, see no valid reason to set aside the said order.

12. The second impugned order(s) dated 20.9.96 (Annexure B colly) pertaining to the relevant representations from all the applicants, including applicant No.1 pertain to their request for promotion to the said post of Assistant Director in the cadre. Briefly it is stated by the respondents therein that the said representations after examination in detail was seen by the Director ARC and the grievance regarding alleged blockage of promotional avenues by bringing officers from other department on deputation is not correct, as such induction is in accordance with the recruitment rules and there is no violation of any rule.

13. On a perusal of the aforesaid impugned order, we are of the view that the same in the facts and circumstances cannot also be termed as non speaking and bald since brief reasons in fact have been given. We, therefore, do not find any justification for setting aside the said order. The relevant ground raised by the applicants thereto also fails and is rejected.

14. Re the relief seeking immediate repatriation of B.B. Mishra, IPS (respondent No.4) on the ground alleging that he is illegally holding the post of Assistant Director, ARC on extended deputation in violation of Govt. of India's

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instructions, it was submitted by the official respondents in reply that the continued deputation of respondent No.4 is under the orders of the appropriate authority and there is no violation of the recruitment rules. The learned counsel for the official respondents during the course of hearing has also produced a photo copy of the order dated 25.10.96 issued by Director in the Cabinet Secretariat, which is taken on record, conveying the sanction of the President for extension to the said respondent upto 31.8.97 or till his successor joins. The learned counsel for the applicants in reply to the contents of the said order dated 25.10.96 has produced during hearing a photo copy of a letter dated 12.3.97 from the said respondent, addressed to Deputy Director, ARC Headquarters, which is also taken on record, seeking repatriation to his parent cadre.

15. The applicants have not been able to establish with supporting material any apparent illegality in the extension given to respondent No.4. Even otherwise the applicants themselves have no locus standi to challenge the extension of deputation granted to a deputationist, as inter alia, they have not been able to prove that the post in question occupied by respondent No.4 belongs to the promotion quota of Assistant Director under the relevant recruitment rules, they could have no legitimate grievance or cause of action against occupation of a deputation quota post by a deputationist. Hence, we reject the aforesaid ground raised by the applicants as being without any legal force.

16. Re the relief sought by the applicants as to the declaration regarding induction of A.K. Sinha (respondent No.5) as being illegal, since he is nearly 57 years of age, the respondents in their reply have submitted that respondent

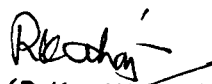
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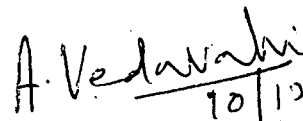
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No.5 is not ineligible for induction on deputation and that there is no violation of the relevant recruitment rules. The applicants in their rejoinder have not spelt out clearly any specific illegality in the induction of respondent No.5. According to the relevant recruitment rules even otherwise they do not have any cause of action or legitimate grievance as they have failed to show that the post occupied by the said respondent belongs to their own promotion quota. In the result the ground of alleged illegal induction of respondent No.5 is also rejected as being unsustainable in law.

17. In the facts and circumstances of this case and in view of the foregoing discussion, we are of the considered opinion that the applicants have failed to establish any legally enforceable right entitling them to the reliefs as sought for. The O.A. in our view does not warrant any judicial interference. The O.A. is, therefore, dismissed.

18. All the interim orders, if any, stand vacated.
No costs.


(R.K. AHOJA)
MEMBER (A)


10/12/97
(DR. A. VEDAVALLI)
MEMBER (J)

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