

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA.No. 2006 of 1996
MA.No.759 of 1997

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Dated New Delhi, this 14th day of August, 1997

HON'BLE DR JOSE P. VERGHESE, VICE CHAIRMAN(J)
HON'BLE MR K. MUTHUKUMAR, MEMBER(A)

H. S. Bhalla
S/o Late Shri A. S. Bhalla
R/o 1664, Outram Lane
Guru Tegh Bahadur Nagar
DELHI-110 009.

... APPLICANT

By Advocate: Shri A. K. Behera

versus

1. Union of India, through
Secretary to the Government
of India, Department of
Industrial Policy & Promotion,
Ministry of Industry,
Udyog Bhawan,
NEW DELHI 110 011.

2. Secretary
Union Public Service Commission,
Dholpur House,
NEW DELHI 110 011.

... RESPONDENTS

By Advocate: Shri K.C.D. Gangwani
and Shri Madhav Panikar.

O R D E R (ORAL)

Dr Jose P. Vergheese, VC(J)

The applicant in this case is seeking relief for a direction to be considered for the post of Security-cum-Estate Officer that has become vacant since May 1992. The admitted case is that the applicant was looking after the duties of the said post since 4.5.92 till he was replaced by the new incumbent during the pendency of this case. The claim of the applicant is that since the new incumbent has now replaced him who has been looking after the duties of the post since 1992, the

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applicant also should have been considered when the respondents proceeded to fill up the said post of Security-cum-Estate Officer. But the respondents did not consider the applicant's candidature on the ground that he was not eligible in accordance with the rules.

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2. According to the respondents, the applicant was appointed on 27.3.91 as Assistant (adhoc) and the said appointment was regularised on 1.7.92 and the DPC held on 19.4.96 did not find him eligible in accordance with the O.M. of DoP&T wherein the crucial date for determination of the eligibility of the approved service is with reference to the date of nomination. It is not very clear since the applicant belonged to the same department and he is holding the post since 1992, on a look-after basis, whether the question of nomination is applicable to the case of the applicant. In this case the respondents rejected the applicant's case on the ground that when the DPC held on 19.4.96 the applicant did not fulfil the required approved service even though he was regularised with effect from 1.7.92 in the grade. It is also not clear whether the cut off date would be applicable to the case of the applicant who was never nominated.

3. The contention on behalf of the respondents is that they are bound to follow the instructions of DoP&T even though the Recruitment

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Rules empower them to relax the said criteria in a reasonable manner and in a suitable case. It goes without saying that when the applicant is being replaced, after he is approved for the job on a look-after basis, from May 1992 till 31.12.96, that is to say almost four-and-half years, the applicant do get a vested right to be considered when he is being deprived of the said facility when the respondents proceeded to replace him by bringing in a new incumbent. It is not the case of the applicant that he may be appointed and regularised straightway on the basis of his past service or on the basis of his holding the post on a look-after basis for four-and-half years. The case of the applicant is that he should have been considered alongwith other outsiders and freshers when the respondents proceeded to hold the DPC for filling up the vacancy in a regular manner. We see considerable force in the contention of the applicant. It is stated that the respondents have already held the DPC during the pendency of this case and the appointment was made subject to the outcome of this Application. In the light of our findings that the applicant who have put in four-and-half years of look-after service is being replaced by a new incumbent, the applicant has a right to be considered for selection alongwith other eligible candidates.

4. In the circumstances, the respondents are directed to hold a Review DPC and consider the applicant as well, as one of the candidates alongwith other candidates who have already been

selected and appointed in the aforesaid post in accordance with the rules, within a period of eight weeks from the date of the receipt of a copy of this order. Till that period status quo of the applicant as well as that of the new entrant should be maintained. No costs.

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5. On a perusal of the Recruitment Rules, it was found that the post has to be filled up on transfer on deputation basis only and the respondents have clarified that the applicant is eligible on that ground and the rejection of the candidature of the applicant was only on the ground of not having the number of approved years of service.

(K. MUTHUKUMAR)
MEMBER(A)

(DR JOSE P. VERGHESE)
VICE CHAIRMAN(J)

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