

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2397/96

New Delhi, this the 13th day of November, 2000

Hon'ble Sh. Kuldip Singh, Member (J)
Hon'ble Sh. S.A.T. Rizvi, Member (A)

1. Shri Charat Kumar, S/O Late Sh. Dhola Singh, R/O No.252, Village & Post Office Sahibabad (UP).
 2. Sh. R.J. Singh, S/O Late Sh. Sabhajit Singh, R/O No.3, Govt. Sunder Nursery Quarters, Nizam Uddin, New Delhi.
 3. Sh. A.K.Saxena, S/O Sh. S.P.Saxena, R/O A-1/B-69, Janakpuri, New Delhi-58.
 4. Sh. Nigam Prakash, S/O Late Sh. G.D.Samuel, R/O H.No.1, Govt. Sunder Nursery Quarters, Nizam Uddin, New Delhi.

(By Advocate: Sh. G.D.Gupta) ...Applicants.

VERSUS

1. Union of India through the Secretary to the Govt. of India, Ministry of Urban Affairs & Employment, Nirman Bhawan, New Delhi.
 2. Director General (Works), Central Public Works Department, Nirman Bhawan, New Delhi.
 3. Director of Horticulture, Central Public Works Department, I.P. Bhawan, New Delhi.

(By Advocate: Sh. V.S.R. Krishna) Respondents.

O R D E R

By Hon'ble Mr. S.A.T. Rizvi, Member (A).

All the four applicants in this OA are currently employed as Sectional Officers (Horticulture) (for short SO-H) in the Central Public Works Department (CPWD) which is an attached office of the Ministry of Urban Affairs and Employment (UA&E). They are aggrieved by the act of the respondents in not filling up seven (out of 20) upgraded posts of Asstt. Director (Horticulture) by promotion. They want this act of the respondents to be

declared as illegal. They also want that this Tribunal declare that the said seven posts are liable to be filled up by promotion and not by direct recruitment. They want a direction to be issued to the respondents to fill up the said seven posts by promotion and grant all the consequential benefits to the concerned employees. The respondents have contended that in terms of the relevant Recruitment Rules (RRs), it is not possible to fill up the said posts by promotion. According to them, the above-mentioned seven posts can be filled up only by direct recruitment.

2. We have heard the learned counsel for both the parties and have perused the material placed on record.

3. By way of giving some background of the developments in this case, the applicants have stated that certain demands made by the Jr.Engineers (JEs) and the SO-Hs working in the CPWD remained under the consideration of the authorities for a long time. One of the demands was in respect of stagnation in the cadre of the JEs and the SO-H. Due to lack of timely response from the authorities, the JEs and the SO-Hs struck work some time in July,87. This led to a detailed discussion between the Secretary, M/o UA&E, the Director General of Works, the Secretary of the Union and the Association of the SO-Hs. It is stated that two Members of Parliament had also intervened in the matter. The agreement dated 20.8.97 reached in consequence of the aforesaid dialogue has been placed on record (Annexure-D). The applicants have relied on this document in support of their case.

(3)

4. It appears that in order to remove stagnation in the ranks of JEs, some 559 posts of Asstt. Engineers (AEs) were specially created in May, 87 by abolishing as many posts of JEs and these posts were filled up by promotion by relaxing the relevant provisions of the RRs as a one time measure. The applicants want a similar treatment to be accorded to them. It is seen that in order to remove stagnation in the ranks of SO-Hs, 20 posts of Asstt. Director (H) were created in July, 95 by abolishing as many as 39 posts of SO (H). The relevant letter dated 13.7.95 is placed at (Annexure-G). This letter does not mention anywhere that the posts in question have been created or abolished in order to remove stagnation in the ranks of SO (H). It also does not indicate any relaxation in the relevant RRs to fill up the newly created vacancies. As a matter of fact, the same letter also creates a number of posts of Asstt. Engineers as well by abolishing a number of posts of JEs and in respect of the JEs also, the said letter does not indicate any relaxation in the relevant RRs. It should be obvious, therefore, that the vacancies created by this letter have to be filled up in accordance with the relevant RRs.

5. This is not acceptable to the applicants who rely on paragraph-9 of the aforesaid document dated 20.8.97, for stressing that like in the case of JEs when 559 vacancies in the rank of Asstt. Engineers were filled up by promotion by relaxing the relevant RRs, in their case also, all the 20 vacancies created by the letter of 13.7.95 should be filled up by promotion by relaxing the relevant RRs. The said para is reproduced below:-

"It was also agreed that all the terms and conditions of service of JEs (CPWD), including those agreed to above, will mutatis mutandis be applied to the applicant."

6. After glancing through the various paragraphs of this document, it does not become clear to us that there was any commitment to relax the relevant recruitment rules insofar as the SOs (H) are concerned. The said document does not at any place mention the number of posts of Asstt. Director (H) which needed to be created as a result of the said agreement and to be filled entirely by promotion. Moreover, the agreement of this sort (document dated 20.8.97) cannot take the place of a proper Govt. decision. As mentioned in the very first para of this document, the issues brought out in it represent a consensus reached between the officers and the employees' association. Agreements, if any, reached during such dialogues are required to be processed for obtaining the competent orders in accordance with the Transactions of Business Rules of the Govt. of India. In view of this, it is no good to argue that all that has gone into the said document, has to be implemented and acted upon as it is. The applicant's argument based on the agreement dated 20.8.87, therefore, fails.

7. The respondents have clearly mentioned that 20 posts in the rank of Asstt. Director (H) were created on 13.7.95 as a result of cadre review by simultaneously abolishing 39 posts of SO (H). According to the RRs, the posts in the grade of Asstt. Director (H) are to be

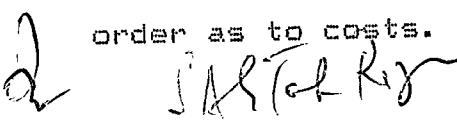
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filled by promotion as well as direct recruitment. The Rules provide that 2/3 are to be filled up by promotion and 1/3 by direct recruitment. The SO (H) constitute the feeder cadre for the post of Asst. Director (H). Following the RRs, 13 posts, i.e., 2/3 of 20, have already been filled up by promotion and the remaining 7 are earmarked for direct recruitment and are yet to be filled up. The respondents have stressed that filling up of these remaining posts by promotion would be illegal and in violation of the RRs. The respondents have admitted that earlier 559 posts of AEs were filled up entirely by promotion by relaxing the relevant provisions of the RRs and thus no violation of the RRs was committed in filling up the posts of AEs. The respondents have taken a decision on merits by taking into account all the relevant factors that it would not be in public interest to relax the RRs for filling up the remaining 7 posts of Asst. Director (H). We find ourselves in agreement with the respondents.

8. In the peculiar circumstances of this case and having regard to the facts mentioned in the preceding paragraph, the OA fails and is dismissed without any order as to costs.


(S.A.T. Rizvi)
Member (A)


(Kuldip Singh)
Member (J)

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