

Central Administrative Tribunal
Principal Bench: New Delhi

18-

OA No. 1939 of 1997 decided on 29.5.98

Name of Applicant: J. K. Khanna

By advocate: Sh. K. C. Mittal

Versus

Name of Respondents: UPSC A Mr.

By advocate: Sh. S. K. Gupta

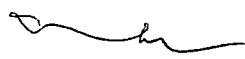
Coram

Hon'ble Mr. N. Sahu, Member (A)

Hon'ble Dr. A. Veeravalli, member (J)

1. To be referred to the Reporter or not? ..y..

2. Whether to be circulated to other Benches of the Tribunal? ..no..


(N. Sahu)
Member (A)



सत्यमेव जयते

19.

Central Administrative Tribunal

PRINCIPAL BENCH

Shri. Hon'ble Dr. A. Vedarvalli..... Vice Chairman
Member (S)

Pre - delivery ORDER in

T.A. / O. A. No. 1939 of 1987.....

is sent herewith for Consideration.

Recd
27.5.98

Narasimha
(N. SAHU) 27.5.98
MEMBER (ADMINV)
27.5.1998.

I agree and have signed the order.
With regards.

Av
28/5/98

Hon'ble Shri N. Sahu - Member (A)

20. *JS*

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1939 of 1997

New Delhi, this the 21 day of May, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A. Vedavalli, Member(J)

J.K.Khanna S/o Shri R.L.Khanna,
R/o F-105, Pragati Vihar Hostel,
Lodi Road, New Delhi - 110 003

-APPLICANT

(By Advocate Shri K.C.Mittal)

Versus

1. Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi through its Chairman.
2. Shri I.M.G.Khan, Additional Secretary & Controller of Examinations, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.

-RESPONDENTS

(By Advocate Shri S.K.Gupta)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The reliefs claimed by the applicant in this Original Application are as under :-

- "(a) Consider the case of the applicant for promotion to the post of Executive Director (I.S.)
- (b) Quash and set aside the impugned order dated 29th July, 1997
- (c) Pay full arrears of the post of Executive Director (I.S.) for the period from 6.12.1996 to 29.7.97.
- (d) Any other order or direction as may be deemed fit and appropriate may also be granted.

The impugned order dated 29.7.1997 is as under :-

"In supersession of this office notification of even number dated 17.6.1997, the Chairman, Union Public Service Commission hereby appoints Shri I.M.G. Khan, Additional Secretary & Controller of Examinations in the office of Union Public Service Commission to hold the additional charge of the post of Executive Director (Information Systems) in the Commission's office in addition to his own duties for a period of three months w.e.f. 29.7.1997 to 28.10.97 or until further orders, whichever is earlier."

It is evident from the impugned order that after 28.10.1997 as there was no further extension and no further specific orders, Shri Khan's appointment ceases from 28.10.1997. There was no dispute on this factual aspect before us. The second factual aspect is that the performance of the applicant has not been questioned, nor his ability to monitor and control the Branch under his control was ever doubted. The third factual aspect is that Shri I.M.G.Khan was on deputation from Postal Services and has no technical qualifications necessary for holding the post. The fourth aspect that is agreed is that the applicant had been holding the post because of his earlier experience in the technical field. He started his career as a Programmer; was qualified; and was familiar with the working of the entire system since its inception.

2. We shall briefly narrate the background leading to this dispute. The applicant was selected as a Senior Programmer with effect from 6.1.1978 and was made Incharge of the Computer Centre from 3.11.1981. He was looking after the activities of the Centre since 1978 which is meant to process all

activities relating to preparation for the examination and the post-examination process. He worked for quite some time as a Senior Programmer, which is a feeder post to the post of Manager (EDP). He was promoted as Manager (EDP) in the scale of Rs.3700-5000 on adhoc basis with effect from 18.2.1983 and was regularized in 1985. He reached the maximum of the scale i.e. Rs.5,000/- in the year 1993. Besides the post of Senior Programmer and Manager, the post of Director (Information Systems) (hereinafter referred to as "the Director(IS)") was created. There were no recruitment rules at the time of creation but subsequently these recruitment rules governing Director(IS) were notified in 1986. Simultaneously, with the promulgation of these recruitment rules, 1986 this post was upgraded to the post of Executive Director (IS) in the scale of Rs.5100-150-5700. After upgradation the minimum requirement was 7 years experience as Manager (EDP) whereas for Director(IS) it was only 5 years. The recruitment rules for the upgraded post of Executive Director (IS) were notified in the year 1991. Thus, the notification of 1986 related to Director(IS) but the notification for the Executive Director(IS) was only in the year 1991. This post of Director (IS) was filled up by direct recruitment and one Dr. Shyam Kumar was appointed and on upgradation the said person continued as Executive Director (IS) also. The Recruitment Rules, 1991 provided that feeder posts for Executive Director(IS) were Manager(EDP), Manager (System Development) and Chief Programmer and a candidate with 7 years regular service in either of

the above grades was made eligible for being considered for promotion to the post of Executive Director (IS). The applicant had 7 years of regular service in the grade of Manager (EDP) in the year 1992. By 1992 it was still held by Dr. Shyam Kumar. In 1994 there was an upgradation of the scale of Executive Director (IS) from Rs. 5100-5700 to Rs. 5900-6700. Dr. Shyam Kumar continued to remain in the said post with the higher scale from 28.10.1994. With the upgradation in the scale the eligibility criteria was also enhanced from minimum of 7 years to minimum of 8 years in the scale of Rs. 3700-5000 or 17 years service in Group 'A'. The applicant claims that he is possessing these essential service criteria. The mode of recruitment did not change when Dr. Shyam Kumar retired in November, 1996. On his retirement the applicant had a legitimate claim for consideration to the said post as he fulfilled all the eligibility conditions. Secondly, the respondents are duty bound to hold a DPC for the said post and consider the eligible candidates. As things stood thus, respondent no. 1 had issued an order dated 6.12.1996 giving current duty charge of the post of Executive Director (IS) to the applicant for a period of three months which was further extended by two further separate orders by periods of three months each. The last term expired on 4.9.1997. He was paid salary in the maximum of the scale of Manager (EDP) along with stagnation increments and he pleaded that he should be given promotion to the post of Executive Director. In stead of that respondent no. 1 issued the impugned order giving additional

charge to respondent no.2 and also an additional benefit under FR 49(3). The grievance of the applicant is that respondent no.2 was not eligible to hold the post. He was also not a technical person to discharge the function of the said post as an Executive Director.

3. After notice, the respondents stated that the applicant's representation by letter dated 29.7.1997 is still under active consideration of the respondents. This O.A. was filed on 11.8.1997. It is admitted by the respondents at para 4.3 that the Recruitment Rules, 1991 provided for promotion as the primary mode of recruitment to the post of Executive Director (IS) and the posts of Manager (EDP), Manager (System Development) and Chief Programmer were made feeder grades. Consequent on the upgradation in 1994 to the post of Executive Director (IS), the recruitment rules needed further amendment to prescribe higher eligibility service and also appropriate modes of recruitment commensurate with the level of the post and organisational requirements. The existing recruitment rules were no longer operative for the upgraded post. This process for amendment of the rules had to be undertaken in consultation with the Department of Personnel and Training and also the Recruitment Rules Branch of the Union Public Service Commission. The process though initiated in right earnest, had to be put on hold due to Government instructions inter alia that no

amendment to recruitment rules should be pursued pending submission of the Fifth Central Pay Commission's Report.

4. We have carefully considered the submissions made by Shri K.C.Mittal, learned counsel for the applicant and Shri S.K.Gupta, learned counsel for the respondents. Shri Gupta, cited a decision of the Hon'ble Supreme Court in the case of State of Haryana Vs. R.K.Aggarwal, (1997) 6 SCC 509. That was a case of claim for salary during current duty charge of a higher post. Their Lordships upheld the non-admissibility of such a claim, particularly when there is a valid reason for not making a regular promotion. This case has no relevance or application to the facts of the case before us.

5. In November, 1996 Shri Shyam Kumar retired. The post of Executive Director (IS) remains to be filled up. The respondents should have held a DPC. As they could not hold a DPC, the senior most person in the feeder grade, namely, the applicant, was given the current charge. He continued for a period of one year up to 28.7.1997 till the impugned order was passed displacing him. Three reasons were given for issuing the impugned order dated 29.9.1997 - (i) exigency of service; (ii) the scale of Executive Director (IS) Rs.5900-6700 was equivalent to that of Additional Secretary & Controller of Examinations and, therefore, the additional charge was entrusted to respondent no.2; (iii) the applicant holding this post was subordinate to the Additional Secretary and

Controller of Examination, therefore, the Additional Secretary himself was entrusted with the additional charge under the enabling provisions of FR 49(3). The applicant had been holding the current charge and respondent no.2 had been holding the additional charge and, therefore, payment of additional remuneration to respondent no.2 was held to be legally admissible.

6. A sealed cover was placed before us. We have gone through the contents of the sealed cover.

7. Two questions need to be addressed by us. Are the respondents justified in displacing the applicant and substituting in his place respondent no.2 ? We have made it clear at the beginning that respondent no.1 the Chairman, UPSC did not question the adequacy or the ability to manage the Information System of the UPSC by the applicant. Secondly, the applicant was fully qualified under the existing rules and was wholly familiar with the system. Thirdly, from the inception to date, the applicant was involved actively and was also Incharge of Programming and Systems. Since his efficiency, integrity and ability to achieve and monitor the Information System was not questioned, there is absolutely no justification to replace him by respondent no.2. The reasons for replacing the applicant by respondent no.2 are not convincing. A mere claim of administrative exigency without any supporting grounds or reasons will not support a decision to displace one adhoc appointee with another

ad hoc appointee. The facts in this case are wholly undisputed. Respondent no.2 is a generalist. He has been asked to hold the additional charge and he has been allowed additional remuneration but the applicant who was competent to hold the additional charge and has been creditably doing so without any additional remuneration for one year has been displaced without any reason. That apart, it is not opposed by the counsel for the respondents that the impugned order was continued after the period stipulated therein. It is admitted that respondent no.2 continues to function without enabling orders.

8. In State of Haryana Vs. Piara Singh (1992) 4 SCC 118 = 1992 SCC(L&S) 825; (1992)21 ATC 403 = (1992)4 SLR 770 the following principles were laid down -

"As regards the temporary/ad hoc employee in govt. service, the normal rule is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/ temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

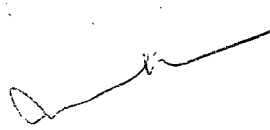
An unqualified person ought to be appointed only when qualified persons are not available through the above process.

If for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities may consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. Persons continuing in service over a number of years have a right to claim regularization and the authorities are under an obligation to consider their case for regularization in a fair manner.

9. In the circumstances, we direct the respondent no.1 as under :-

(i) The applicant should be restored the charge of Executive Director (IS) within two weeks from the date of receipt of a copy of this order since we assume that in the absence of an order to continue respondent no.2 he ceases to be functioning as Executive Director (IS) from 29.10.1997. The file shown, or the pleadings, or the submissions made at the time of hearing have not indicated anywhere about the extension.

(ii) If respondent no.1 wants to place the applicant as Incharge of current duties only and not as an additional charge it is within his discretion to do so and in that event the applicant cannot claim additional remuneration if he is placed in current charge and not in additional charge.



(iii) The respondents should at the earliest opportunity i.e. within a period of four months finalize the recruitment rules for the post of Executive Director (IS).

(iv) Once the Recruitment Rules are framed, respondent no.1 within four weeks thereafter initiate the process of recruitment, convene a DPC and consider all eligible candidates. If the applicant is also eligible and fulfils the newly prescribed qualifications under the revised recruitment rules, he shall also be considered for the post along with others. If after the promulgation of the recruitment rules, the applicant does not possess even the minimum qualifications, respondent no.1 can consider some other candidate who fulfils such minimum qualifications to be Incharge of the post but upto that time, the applicant shall substitute respondent no.2.

(v) No back wages can be paid for the period for which the applicant did not hold additional charge.

(vi) It is for respondent no.1 to device a solution for reporting and control of the applicant's work. We are not shown any rule that only the Additional Secretary should be the reporting officer for Executive Director (IS). If the Executive Director (IS) is of the rank of an Additional Secretary, we suggest respondent no.1 for consideration that the Secretary can himself be the reporting officer. That difficulty need not come in

the way of appointing the applicant as Incharge of Executive Director to which he is qualified under the existing rules, he is tested and on the existing averments nothing negative has been found against him.

10. The O.A. is disposed of as above. No costs.

A Vedavalli

(Dr. A. Vedavalli)
Member (J)

N. Sahu

(N. Sahu)
Member (Admin)

29.5.78

rkv.