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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 2046/97

New Delhi: this the 5th day of September, 2000.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Radha Kant Bharati,

No. 525, Sector-9,

R.K. Puram,

New Delhi-22

.....Applicant.

(Applicant in person)

Versus

1. Union of India,
through
Ministry of Water Resources,
Sharam Shakti Bhawan,
Rafi Marg,
New Delhi-1

2. The Chairman,
Central Water Commission,
Sewa Bhawan,
R.K. Puram,
New Delhi-66

3. The Chief Engineer,
& Chairman, Editorial Board,
Bhagirath,
Central Water Commission,
Sewa Bhawan,
R.K. Puram,
New Delhi -66

.....Respondents.

(None for respondents)

ORDER

Mr. S. R. Adige, VC(A):

Applicant seeks pay and allowances including arrears, of the post of Editor, Bhagirath (Hindi) for the period he worked as such and prays that he be regularised against that post and be continued against the same till he retires upon superannuation. Interest on arrears is also claimed.

2. A perusal of the Tribunal's order dated 17.4.90 (Annexure-R10) in OA No. 199/86 filed earlier

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by applicant in which inter alia he had sought appointment as Editor Bhagirath Magazine on regular basis w.e.f. 1.9.80, reveals that applicant was appointed as Hindi Officer on adhoc basis in CWC w.e.f. 1.6.71. A Hindi version of Bhagirath was started in 1974 and applicant was appointed as Asstt. Editor Bhagirath(Hindi) in an officiating capacity w.e.f. 1.5.78 after selection through UPSC. He was included in the Editorial Board and edited the journal under the control of the Director, CWC. Both the posts of Hindi Officer and Asstt. Editor (Bhagirath Hindi) were in the old scale of Rs. 650-1200. On 1.9.80 a temporary post of Editor for the Hindi Bhagirath in CWC in the old scale of Rs. 1100-1600 was approved to be created from the date of filling up of the post, and the existing post of Asstt. Editor (Rs. 650-1200) was to stand abolished. A temporary post of Sub-Editor (Rs. 550-900) was also sanctioned. The CWC Editor (Hindi Bhagirath) Recruitment Rules were notified on 7.6.84 by which the post was to be filled by transfer on deputation failing which by direct recruitment but a Note in Col. 10 to the Schedule of those Rules provided that the suitability of the regular holder of the post of Asstt. Editor would be assessed by the UPSC and if assessed suitable he would be deemed to have been appointed to the upgraded post of Editor on regular basis at initial constitution.

3. Applicant had filed a writ petition in Delhi High Court which was disposed of by order dated 5.9.84 whereby applicant's case was to be considered by UPSC for appointment as Editor, and if he was assessed suitable he was to be deemed to have been so appointed.

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4. Accordingly the matter was referred to UPSC who by their letter dated 30.11.84 (Annexure-R3) did not recommend applicant for appointment as Editor (Bhagirath-Hindi) on a regular basis at the initial constitution of the Rules.

5. As applicant was not assessed suitable for appointment to the upgraded post of Editor (Bhagirath-Hindi) efforts were made to fill up the post by transfer on deputation but as no suitable candidate was available, recourse was made to direct recruitment method and eventually the post was filled up on 4.1.96 by direct recruitment through UPSC.

6. Meanwhile as mentioned earlier, applicant had filed OA No. 199/86 seeking a direction to UPSC to recommend his name for the post of Editor Bhagirath-Hindi and the to appoint him as such on regular basis w.e.f. 1.9.80 i.e. the date of initial constitution and to pay him all arrears of salary etc. That OA was dismissed after hearing on merits by a detailed order dated 17.4.90.

7. For the purpose of the present case, para 7 of that order dated 17.4.90 is relevant and is extracted below:

"Another point vehemently urged before us by the learned counsel for the applicant was to the effect that the applicant has been working as Editor of Bhagirath-Hindi since its inception-first in his capacity as Hindi Officer and then in his capacity as Asstt. Editor of this magazine. Copies of some issues are also filed in support of that contention. In none of these copies however he is shown as Editor. In the issue for October-December, 1982 (Gujarat Ank), he is shown as 'Prabhari Sampadak'. In the issue for July-September, 1987, he is shown as 'Sahayak Sampadak'. In the issue for October-December, 1989 his name does not appear at all. Moreover, he has not been able to show any proof of having been appointed

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as Editor of this magazine. For certain specified purposes, he was allowed "to act as Editor, for Editorial purposes only". This was done under the signature of S.S.Iyer, Director (Tech.DOC) with a view to authorising the applicant to visit the Govt. press on his behalf and arrange the final printing of the Hindi journal. In this communication also (Annexure-R 11), he has mentioned R.K.Bharti as Asstt. Editor and the communication also states that "Though Shri Bharti is an Asstt. Editor, but de-facto he is handling all editorial works" and, therefore, he was permitted to act as Editor for editorial purposes only. This order was also not operating for the entire period for which the applicant claims to have acted as Editor. In the pleadings of this case, the applicant himself has also used different designations for himself. In para 3 of his rejoinder it is stated "that though there was an Editorial Board but the petitioner was the Executive Editor since the inaugural issue and acted as Member Secretary of the Board." In para 4, he has used the term "Working Editor" which he equates with the term "Executive Editor". In the same para, he stated that "he was the Member Secretary in the Editorial Board due to his being incharge of the Editorial work." In any case, the fact that applicant might have looked after some duties which go with the post of Editor of a magazine, would not ipso-facto either make him the Editor or give him the appointment to such a post, in violation of the Recruitment Rules."

8. Nothing has been shown by applicant to establish that the aforesaid order dated 17.4.90 has been stayed, modified or set aside.

9. Meanwhile consequent on the selected candidate joining as Editor Bhagirath(Hindi) vide office order dated 4.11.96 (Annexure-RIV), the existing post of Asstt. Editor (Bhagirath-Hindi) was abolished vide letter dated 30.10.96 (Annexure-RVI) and applicant, the then incumbent on the post, was rendered surplus w.e.f 4.11.96 vide Respondents' office order dated 13.11.96 (Annexure-A). Accordingly applicant was transferred to the surplus call Establishment of CWC.

10. We have heard the applicant who argued the case in person. None appeared for respondents. We have

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perused the pleadings and also the written submissions filed by applicant.

11. There is merit in respondents' reply that applicant had agitated all the points raised in the present OA, before CAT PB in OA No. 199/86 which was dismissed by order dated 17.4.90. In particular, in the light of the Tribunal's findings in that OA extracted in para 7 above, we find ourselves unable to grant applicant the relief, he seeks in the present OA, which is therefore dismissed. No costs.


(KULDIP SINGH)
MEMBER (J)


(S.R. ADIGE)
VICE CHAIRMAN (A).

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