

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

7

O.A. No. 2056 of 1997 decided on 9.2.1998.

Name of Applicant --- N. Jaya Kumar ---

By Advocate : Sh. R.B.S. Rajan ---

Versus

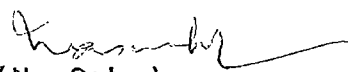
Name of respondent/s Union of India

By Advocate : Shri D.S. Jagat ---

Coram:

Hon'ble Mr. Dr. Jode P. Verghese Vice Chairman (J)
Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2056 of 1997

New Delhi, this the 9th day of February, 1998.

Hon'ble Dr. Jose P. Verghese, Vice Chairman(J)
Hon'ble Mr. N. Sahu, Member(A)

N. Jaya Kumar
R/o 30, Lodhi Road Colony
New Delhi - 110 003

...Applicant

(By Advocate : Sh.K.B.S. Rajan)

Versus

Union of India : through

1. The Secretary
Ministry of Law, Justice &
Company Affairs
Shastri Bhawan
New Delhi
2. The Secretary
Department of Company Affairs
Shastri Bhawan, 'A' Wing
Dr. Rajendra Prasad Road
New Delhi
3. The Secretary
M.R.T.P. Commission
Shahjahan Road
New Delhi - 110 011
4. The Chairman
U.P.S.C.
Dolpur
New Delhi
5. Sh. Sudip Ahluwalia
Sub Divisional Munsif
Islampur, Distt. Uttar,
Dinajpur - 733 202
West Bengal

...Respondents

(By Advocate : Sh.D.S. Jagotra
and Sh.J.S. Bhatia)

ORDER

By Sh. N. Sahu, Member(A) -

In this OA the applicant assails the selection of Sh. Sudip Ahluwalia (Respondent No.5) by an order dated 27.08.1997. His ground is that the selection is vitiated by virtue of non-constitution of

harasimha

8

the DPC as per the recruitment rules. He challenges the revised recruitment rules relating to the appointment to the post of Dy. Director as illegal because those rules do not allow any avenue of promotion to a Court Master.

2. The brief facts leading to the dispute are that the applicant had worked as a Court Master in the office of Resp.No.3 since 14.07.1988. He was confirmed in the said post after two years. When a post of Dy.Director (Legal) fell vacant in 1996, Respondent No.2 appointed the applicant to the said post on ad-hoc basis on 10.09.1996. Before his appointment, on 19.07.1996, Respondent No.2 invited applications for filling up this post and the applicant applied for the same by his application dated 26.09.1996. The MRTS Commission Group 'A' & Group 'B' Recruitment Rules 1997 were published on 18.01.1997 replacing the earlier recruitment rules. Under these rules, the post of a Deputy Director is required to be filled-up on deputation but the erstwhile provision that such a deputation would be treated as promotion if the Court Master is selected, has been omitted. The grievance of the applicant is that the promotional avenue available to the Court Masters has been withdrawn by the Recruitment Rules of 1997. Pursuant to the earlier circular dated 10.07.1996 the UPSC constituted a Selection Committee and directed the applicant along with the others for an interview/"personal talk". The applicant's

Harasimha

9
grievance is that the composition of the DPC for selection of a candidate to the post of Dy. Director (Legal) as per the extant rules is the Chairman/ Member of UPSC and three other members; (i) Secretary of MRTP Commission, (ii) Director (Admn), Deptt. of Company Affairs and (iii) one member to represent SC/ST but the Board which conducted the "personal talk" was constituted by a Member of the UPSC, Director of Administration, Deptt. of Company Affairs and another member. His grievance is that the constitution was not in accordance with rules. He is also aggrieved that he is deprived of the only chance of promotion available to a Court Master and that was denied by the recruitment rules and with 8 years of service the applicant has not been promoted to this post. This is stated to be unfair to him.

3. After notice, the respondents stated that the applicant had applied for the post and was familiar with the rules. He appeared at the interview/"personal talk". He cannot after his non-selection, challenge the said process of selection. It is next stated that the applicant was promoted on an ad-hoc basis as a Deputy Director (Legal). It does not confer on him any right to a regular status. It is purely a stop-gap arrangement. A selection after due process has been made and, therefore, the applicant's ad-hoc appointment would automatically cease. It is stated that this post is neither a promotional post nor do the rules provide for any DPC for selection to the post. The rules only provide that the departmental Court Master with 8

Harasmit

10

years' service is eligible for consideration along with others. The applicant has been given a chance for consideration. There is no automatic right of selection. That selection has been made as per rules and in consultation with the UPSC.

4. The Respondent No.5 in his counter stated that the appointment of the applicant was temporary and ad-hoc till a regular incumbent joined. It was made clear in the order of appointment that it did not bestow any right for a regular appointment. The first ad-hoc appointment ceased after 10.03.1997 and if there was any extension, it ceased on 10.09.1997. The notification dated 10.07.1996 allowed departmental Court Masters with 8 years service to be considered and if selected, the same would be treated as having been filled-up by promotion. Respondent No.5 also states that the applicant having accepted the same and having gone through the process of selection cannot be permitted to attack the recruitment process. It is also stated by Respondent No.5 that DPCs are required to be constituted for filling up posts by promotion and not for considering candidates for filling up posts by transfer or by direct recruitment. In the present case, the post of Dy. Director (Legal) is not a promotion post as such but in the event of the departmental Court Master having been selected, it would be treated as a promotion. It is also submitted that the categories which are feeder posts for promotion have not been shown in this case. It is further submitted that in this case applications were invited and, therefore, it cannot be called a

Handwritten signature

promotion. In a promotion, no applications are invited but all the officers within the effective zone are considered by the DPC. Thus, Respondent No.5 states that the post of Deputy Director (Legal) is not a promotion post and the departmental Court Master is eligible for consideration for the said post along with other candidates for which the selection is made by the UPSC as provided under Column 13 of the Recruitment Rules of 1997.

5. We have carefully considered the submissions. The fact remains that the applicant's appointment is an ad-hoc appointment for a limited period as a stop-gap arrangement. This appointment does not confer on him any right for regularisation or any weightage for promotion. We have been shown the Selection Committee minutes. There was a Selection Committee meeting along with a "personal talk" on 24.06.1997. The persons present were (i) the UPSC Member (ii) Prof. K.K. Nigam, Retd. Head and Dean, Department of Law, New Delhi who assisted the Commission as an advisor, (iii) Sh.L.C. Goyal, Director, Deptt. of Company Affairs, Ministry of Finance represented the Department. Seven candidates were considered: (i) Sh.N. Jaya Kumar(SC) - the applicant (ii) Sh.Raj Singh, (iii) Sh.Phogat, (iv) Sudip Ahluwalia, (v) Sh.U.K.Shaw, (vi) Sh.S. Bandyopadhyay and (vii) Sh.P.M. Mishra. The UPSC perused the particulars of service, experience, character rolls and the bio-data of the eligible officers. The "personal talk" was in the nature of an interview. It recommended for appointment Sh.Sudip

Harasund

12

Ahluwalia (Respondent No.5) for the post of Deputy Director (Legal) in MRTD Commission. He was accordingly appointed on transfer on deputation for a prescribed period as per the recruitment rules.

6. It is well settled that no-one has a vested right for promotion but there is only a right for consideration for promotion. The same rule applies for selection. A person duly considered in accordance with the rules and not selected because of the availability of persons with superior merit, cannot assail the selection. This view gets support from the decision of Apex Court in State Bank of India Vs. Mynuddin - AIR (1987) SC 1889. The Apex Court also laid-down that only when the process of selection is vitiated on the ground of bias, malafide or similar such circumstances that a judicial authority can interfere.

7. We have gone through the pleadings. The applicant has not alleged any malafides in this selection. Considering the fact that on 19.07.1996 applications were invited and they were scrutinised and people were called for a selection, shows that the Selection Committee cannot be termed as a DPC; we have no doubt in our minds that the Selection Committee as above chaired by the UPSC Member had considered the bio-data, experience, ACRs of all the competing candidates and recommended the case of Respondent No.5 on merits. As there is no ^{doubt} about the objectivity of the selection, we do not think it is a fit case which calls for our judicial interference.

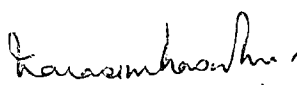
[Handwritten signature]

13

8. In the circumstances, the minor variations in the constitution of the Selection Committee different from those of a DPC prescribed in the rules, cannot be challenged. The UPSC is entitled to take any expert advice and seek all necessary assistance in order to enable it to arrive at a proper selection. It is not for the applicant to suggest who should be part of the Selection Committee. As it is not strictly a promotion but only a selection, the argument advanced about the constitution of the DPC has become academic.

9. The applicant having participated in the process of selection cannot challenge it simply because he was not successful as per the decision of the Supreme Court in Shankarsan Dash Vs. Union of India - (1991) 17 ATC SC 95. In this view of the matter the contention that no avenue of promotion had been left open to a Court Master cannot be seriously raised because the Court Master with 8 years experience has been invited for a selection and the applicant has participated in the same. Further, in the background of the discussion above, there is no need to go into the validity of the revised Recruitment Rules.

10. OA is dismissed. No costs.


(N. Sahu) 9/2/99
Member (A)


(Dr. Jose P. Verghese)
Vice Chairman (J)

/Kant/