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Central Administrative Tribunal, Principal Bench

OA No.2344/97

New Delhi this the 25th day of April, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

Deo Prakash Sharma,
C-53, Sector-26,
Noida, Ghaziabad.

...Applicant

(By Advocate Shri Saurabh Prakash)

-Versus-

1. National Museum,
through its Director Gr.
Janpath, New Delhi.

2. UPSC through its
Chairman, Dholpur House,
Shahjhan Road,
New Delhi.

3. Sh. J.E. Dowson,
National Museum,
Janpath, New Delhi.

4. Deptt. of Culture,
through its Secretary,
Shastri Bhawan,
New Delhi.

...Respondents

(Respondents 1&4 through Shri Rajeev Bansal, Advocate)

(Respondent No.3 through Shri S.K. Chachra, Advocate)

(None for Respondent No.2)

O R D E R

By Reddy, J.:-

The applicant joined the service of National Museum in 1985 as Deputy Keeper (Pre-History and Archaeology). He was promoted on ad hoc basis as Keeper (Education) in 1992 and he worked as such till 1995. Later on, he was reverted to the post of Deputy Keeper (Pre-History and Archaeology). The applicant is the seniormost Deputy Keeper in the National Museum Delhi. As per the recruitment rules the method of appointment to the next higher post of Keeper (Archaeology) was by promotion,



failing which by direct recruitment. For promotion to the post of Keeper (Archaeology) only Deputy Keeper (Archaeology) with five years experience in the grade is eligible to be considered. The post of Keeper (Archaeology) fell vacant on 27.7.92. According to the applicant he was eligible for consideration for promotion but the respondents have not considered him on the ground that he was not eligible. The next course that was to be adopted was to fill up the post by direct recruitment. The respondents, however, had purposely delayed the process of direct recruitment only to see that R-3 who had been appointed as Deputy Keeper (Archaeology) in 1992 would meanwhile acquire the eligibility for promotion by completing five years of service. Accordingly the proposal for direct recruitment was shelved by order passed in 1996 on the ground that R-3 would acquire the eligibility for promotion in 1997 after completing five years of service in the post of Deputy Keeper (Archaeology). Eventually, by order dated 5.12.97 R-3 was considered for promotion on completion of his five years of service and was recommended by the DPC and he was promoted to the post of Keeper (Archaeology).

2. The applicant, therefore, prays for promoting him to the post of Keeper (Archaeology) w.e.f. 20.7.92, the date on which the said vacancy arose, to declare the recruitment rules pertaining to the appointment to the post of Keeper (Archaeology) in so far as it prescribes that only Deputy Keepers (Archaeology) are eligible for promotion as discriminatory and arbitrary and consequently strike down the rules and to hold all the Deputy Keepers to be eligible for promotion to the said post and to direct R-2 to fill up the post of Keeper (Archaeology) by direct recruitment.

[Signature]

3. Respondents 1 and 4 filed the counter and contested the case. They submit that the applicant was appointed in the post of Deputy Keeper (Pre-Historic Archaeology) and as such he was not eligible for promotion to the post of Keeper (Archaeology). Only Deputy Keeper (Archaeology) is eligible for promotion.

4. It is also the case of the respondents that the vacancy of Keeper ((Archaeology) arose on 12.1.93 and not on 20.7.93 and that the applicant was not eligible for promotion in the said vacancy. In fact none was found eligible for promotion in the department. Hence, the process of direct recruitment was initiated in 1994 but by letter dated 19.8.96 the UPSC expressed its inability to agree to the proposal to fill up the post by direct recruitment as R-3 would become eligible for promotion by 31.2.97. Hence, the proposals for promotion were sent to the Department of Culture and eventually the DPC meeting was held in 1997 in the UPSC. It is now brought to our notice that pending the OA R-3 has been promoted to the post of Keeper (Archaeology).

5. R-3 filed a separate counter, broadly adopting the stand taken by the respondents 1 and 4. R-2 has not filed any reply.

6. We have heard the learned counsel on either side and considered their submissions. We have also perused the pleadings and material papers in the case.



7. Three questions emerge out of the above pleadings.

- (i) Whether the applicant was working as Deputy Keeper (Pre-History and Archaeology) or Deputy Keeper (Pre-Historic Archaeology).
- (ii) Whether the applicant was eligible for promotion to the post of Keeper (Archaeology)? and
- (iii) whether the vacancy in the post of Keeper (Archaeology) was to be filled up by direct recruitment and whether the promotion of R-3 in the said vacancy is justified?

8. In order to show that he was eligible for promotion to Keeper (Archaeology), the applicant came forward with the case that he was working only as Deputy Keeper (Archaeology and Pre-History), but the respondents dispute the same and submit that he was only Deputy Keeper (Pre-Historic Archaeology) and hence he was not eligible.

9. For the purpose of showing that the applicant was working as Deputy Keeper (Archaeology and Pre-History) the learned counsel for the applicant has placed strong reliance on several documents forming part of Annexures P-1 and P-6 (filed along with the rejoinder). We have perused the same. It appears that the applicant was offered the post of Deputy Keeper ((Pre-History and Archaeology) but in



(5)

fact he was appointed by order dated 18.2.85 as Deputy Keeper (Pre-historic Archaeology) Group 'A' by the Hon'ble President of India on the recommendations of the UPSC. The respondents also rely upon several documents to show that the applicant has been working in the post of Deputy Keeper (Pre-historic Archaeology). Keeper (Pre-history). Though the applicant has been variously described by the department itself, sometimes as (Pre-historic Archaeology) sometimes (Pre-history and Archaeology) and at some other times as (Pre-history) the fact remains that he has been appointed as Deputy Keeper (Pre-Historic Archaeology). Further under the Recruitment Rules there is a category of post of Deputy Keeper ((Pre-History) but there are no posts in the category of Deputy Keeper (Pre-History and Archaeology) or Deputy Keeper (Pre-History). There can be no appointment to a post which does not exist in the recruitment rules. The learned counsel for the applicant, however, places reliance upon the Annexure P-2 which shows that the departments of Pre-history and Archaeology have been ordered to work as a team and the applicant has been posted to work as Deputy Keeper with both these departments. But the mere fact that he was asked to man both the departments for a particular period it cannot be presumed or implied that the applicant has been appointed as Deputy Keeper ((Pre-History and Archaeology. In the circumstances it has to be held that the correct designation of the applicant was only Deputy Keeper (Pre-Historic Archaeology).

10. From a perusal of the recruitment rules for the post of Keeper (Archaeology), the appointment is by way of promotion, failing which by direct recruitment. The feeder post for promotion is Deputy Keeper (Archaeology)



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with five years service in the grade. Only one feeder post was shown in the rules and hence the applicant being not Deputy Keeper (Archaeology) is not entitled to be promoted to the above post.

11. Learned counsel for the applicant, however, submits that there is no other post open to the applicant by way of promotion as for other posts, in the National Museum i.e. Keeper (Public Relations) or Keeper (Lecturing and Education) the applicant is not entitled for promotion as per the eligibility conditions under the Rules. Hence the Rules must be held as violative of Article 14 and 16 of the Constitution. The learned counsel for the respondents, however, submits that the applicant is entitled for promotion to the post of Keeper (Public Relations) by way of promotion where the method of recruitment was by promotion, from the feeder post of Deputy Keeper (Pre-history). We are of the view that the expression "Pre-History" qualifies the Archaeology and Deputy Keeper (Pre-Historic Archaeology) appears to qualify for promotion to the post of Keeper (Archaeology). Further in view of the fact that the respondents have themselves taken the stand that the applicant is also entitled for promotion to the post of Keeper (Public Relations), it cannot be said that the applicant has no other promotional avenues in the department. As and when a vacancy arises in the post for promotion to the post of Keeper (Public Relations) the applicant shall be considered as eligible for the same. In this view, we do not subscribe to the argument that the rules are either discriminatory or arbitrary.



12. Lastly, it has to be considered whether the action of the respondents in not filling up the post by direct recruitment was justified?

13. It is not in dispute that in the absence of any candidate for promotion the post had to be filled up by direct recruitment. In fact the respondents have stated that the process of direct recruitment has been initiated in 1994, i.e., after one year after the vacancy arose. From the averments made in the counter by R-1 and R-4 it is manifest that the respondents were guilty of delay tactics in filling up the post by direct recruitment, thus committing breach of statutory rules. The requisition was sent to the department on 19.8.94 and the Department of Culture referred the same to the UPSC. It was stated that the UPSC has called for some clarifications to which the respondents clarified only after about one year i.e. on 26.4.96. The reason given by the UPSC by letter dated 19.8.96, in not filling the post by ^{direct} treat recruitment in accordance with rules was that R-3 would become eligible by 31.3.97. Thus a strange reason has been given by the USPC, ignoring the statutory rules only to favour R-3 who was not eligible for consideration for promotion when the post fell vacant. R-3 has been appointed in 1993 when the vacancy arose for direct recruitment. Thus the rules have been successfully circumvented and Articles 14 and 16 of the Constitution were blatantly violated. The accrued rights of the applicant have thus been trampled upon. We do not find any justification in not advertising the post in 1993 when the vacancy arose to consider the eligible candidates for recruitment. The reasons given for not filling up the post in 1993 itself should be straightaway discarded. The



(8)

respondents delayed the process only to await acquiring the eligibility by R-3. Ultimately R-3 has been promoted to the post of Keeper (Archaeology), ignoring the fundamental rights of the applicant and other suitable and eligible persons for direct recruitment. The Supreme Court has come down very heavily for the dereliction of duty inaction on the part of the respondents in an identical case in Pradip Gogoi and Others v. State of Assam and Others, 1998 ((8) SCC 726 the Supreme Court stated:

"It is settled law that even an eligible candidate has a fundamental right to lay his claim for consideration in his own right for recruitment to an office or post under the State under Article 16 ((1) of the Constitution. The non-notification by the appropriate authority, is having a deleterious effect on the psyche of the people. The dereliction of duty is seriously eroding the constitutional rights under Article 16 (1) and is a source to circumvent due process of selection."

14. The Promotion of R-3 was brought about subverting the rules and fundamental rights of the applicant and hence is illegal and is accordingly set aside.

15. We direct respondents 1 and 2 to take immediate steps to advertise the post of Keeper (Archaeology) and fill up the same by direct recruitment considering all the candidates, including the applicant as per the qualifications stipulated in the rules.

16. The O.A. is accordingly allowed in part with costs of Rs.5,000/- (Rupees five thousand only).

Shanta
(Smt. Shanta Shastry)
Member (A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)

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