

Original Application No.302 of 1997

New Delhi, this the 30th day of October, 2000

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

A.R. Rao
Deputy Director (Civil),
Development Wing,
Ministry of Surface Transport,
New Delhi. - Applicant

(By Advocates - Shri P.P. Khurana, Sr. Counsel with
Ms. Rinchen O. Bhutia, Counsel)

Versus

Union of India
Through the Secretary,
Ministry of Surface Transport,
Parliament Street,
New Delhi. - Respondents

(By Advocate - Shri S.M. Arif)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this OA has assailed the action of the respondents to fill up the post of Director (Development) in the Ministry of Surface Transport for being filled up by way of direct recruitment instead of by promotion and has prayed for the following reliefs:-

".....(I) It is respectfully prayed that the respondents may be restrained from filling up the post of Director (Development) in the Ministry of Transport for being filled up by way of promotion and to consider the case of the applicant for appointment to the said post by way of promotion.

Any other or further orders as deemed fit and proper in the facts and circumstances of the case be also passed to meet the ends of justice".

2. Facts in brief are that the applicant had

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joined the Ministry of Surface Transport as Deputy Director which is a Group 'A' Gazetted non-ministerial post and was allocated to Inland Water Transport Directorate (hereinafter referred to as IWTD), Ministry of Shipping and Transport. Sometime in the year 1985 The Inland Waterways Authority of India (in short IWAI) was constituted by the Parliament of India under the Inland Waterways Authority of India Act and according to its Constitution, all the employees holding any office under the Central Government immediately before such day solely or mainly for or in connection of such affairs of the IWTD which were relevant to the functions of the newly constituted authority were to be treated as on deputation to the said Authority. However, the applicant was not relieved at the time of constitution of the said Authority and he continued to remain with the Ministry of Surface Transport working in the same capacity as earlier and it was only in the year 1988 that he was asked whether he would like to remain in the Ministry or would join the Inland Waterways Authority of India and at that stage applicant again gave an option for being retained in the Ministry of Surface Transport.

3. The Ministry have various wings including Inland Water Transport Wing and Development Wing. The applicant was initially working in the Inland Water Transport Wing since 1983 when he was initially appointed. However, vide order dated April 2, 1993

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the applicant was transferred to Development Wing and during the course of time the applicant was appointed on transfer basis vide Anneuxre A-4.

4. The Development Wing has a post of Director (Development), recruitment to which is governed by the statutory Recruitment Rules called the Ministry of Surface Transport (Transport Wing) Development Advisers Organisation (Group 'A') and Group 'B' Engineering Posts (Recruitment Rules), 1989. The post is a selection post and as far as the method of recruitment is concerned the same is prescribed as by promotion, failing which by transfer on deputation and failing both by direct recruitment.

5. The applicant's grievances started from this point that since the post of Director (Development) is to be filled first by promotion, secondly is by way of transfer on deputation and last in case of failure of both the modes by direct recruitment. The applicant claims that since he is eligible for being promoted to the post of Director (Development) as he has the requisite qualification and experience, so he is entitled to be considered for appointment to the post of Director (Development) by way of promotion which is the first method to be exhausted before embarking upon the alternative methods of recruitment. The applicant is also said to have made a representation before the superannuation of the then incumbent of the post and in his representation the applicant has also disputed the stand of the respondents that no suitable officer was eligible in the grade of Deputy Director. The

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said representation is Annexure A-7 and another representation is Annexure A-8. Since the respondents did not consider him fully eligible for consideration for the post of Director (Development) by way of promotion, the applicant also claims to have applied for being considered for appointment by way of deputation but that request was also turned down on the ground that the officers who are in the feeder grade and who are not in the direct line of promotion were not eligible for consideration on transfer or deputation. Having found no suitable candidate by way of transfer and deputation, the respondents resorted to the process of direct recruitment and an advertisement was issued vide Annexure A-1.

6. The applicant further submitted that he has put in 5 years of regular service in the grade of Deputy Director as he has been there since 12.12.1983 and he also fulfils all the educational qualifications and satisfies the criteria as laid down in the Recruitment Rules, so the action of the respondents for restoring to direct recruitment is stated to be ultra vires, arbitrary, irrational, discriminatory and is hit by Articles 14 and 16 of the Constitution of India.

7. The respondents contested the O.A. They, however, admitted that the applicant was appointed as Deputy Director (Civil) in Inland Water Transport Director w.e.f. 12.12.1983. But after the constitution of IWAI the applicant had opted to be retained in Ministry to deal with the technical

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U matters of Inland Water Authority of India and as such the applicant was transferred to the Development Wing of this Ministry w.e.f. 2.4.993 as an internal arrangement and was appointed as Deputy Director (Civil) against a vacancy of Dy. Director on 11.1.1994 on the recommendations of the UPSC. It is admitted that the first mode of appointment to the post of Director (Development) is by way of promotion and the eligibility criteria is stated to be that the candidate must possess 5 years regular service in the grade of Sr. Dy. Director (Design), secondly as "Technical Personal Assistant" to Development Adviser (Ports) with 5 years regular service in the grade and as "Executive Engineer" with 5 years service in the grade and all these posts had been redesignated as Deputy Director (Civil).

8. It is further pleaded by the respondents that the post of Director (Development) fell vacant w.e.f. 1.11.1994 due to the retirement of the regular incumbent but none of the officers including the applicant had completed 5 years of regular service in the grade hence the vacancy of Director (Development) was circulated to be filled up by second mode of recruitment, i.e., by transfer on deputation.

9. It is further stated that the services rendered by the applicant in the Directorate of Inland Water Transport cannot be counted and on this matter DOP&T was consulted but they did not agree with the request of the applicant for counting of his service in Inland Water Transport Directorate for determining

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the eligibility for promotion to the grade of Director (Development). The mode of transfer of deputation also failed due to poor response of the candidates and the third mode of recruitment was resorted upon.

10. It is further submitted that the Inland Water Transport Directorate was not a wing of Ministry of Surface Transport but an attached office and since the applicant was appointed as Dy. Director (Civil) in Inland Water Transport Directorate w.e.f. 12.12.1983 but was re-deployed against the ex-cadre post of Inland Water Transport Division and was transferred to the Development Wing w.e.f. 2.4.93 as an internal arrangement. However, he was appointed as Dy. Director (Civil) in the Development Wing only w.e.f. 11.1.1994 on the recommendations of the UPSC and since after the appointment in the Development Wing the applicant has only 10 months of service to his credit in the grade of Dy. Director (Civil) on the date of accrual of vacancy, i.e., 1.11.1994, so he was not eligible for promotion to the post of Director (Development). The service rendered by the applicant as Dy. Director (civil) in Inland Water Transport Directorate and Inland Water Transport Division cannot be taken into account for determining the eligibility for promotion in the grade of Director (Development) as this post was not included in the feeder post for promotion to the post of Director (Development).

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11. Rejoinder to this counter-affidavit was filed wherein the applicant reiterated that on the formation of Inland Waterways Authority of India, the applicant was retained by the Ministry of Surface Transport while exercising their power under Section 11(1)(f) of Inland Waterways Authority Act, 1985 as it is clear from Annexure R-1 and the services of the applicant were taken on the strength of the Ministry of Surface Transport w.e.f. 20.2.1987 as per Annexure R-1. The applicant was not given an option to join the Inland Waterways Authority of India. It was also submitted that the applicant continued to draw his salary from the Ministry of Surface Transport and continued to perform his functions as Deputy Director in the Ministry from that very office, i.e., Transport Bhawan where the applicant was already working and the formation of Inland Waterways Authority of India has no effect on the functioning of the applicant and performance of his duties so it is denied that the applicant has not completed 5 years of regular service in the grade rather it is stated that the applicant was in the grade of Dy. Director (Civil) ever since 12.12.1983 and has almost rendered 10 years of regular service in the grade.

12. It is further pleaded that the applicant was transferred to the Development Wing of the Ministry from IWT Wing w.e.f. 2.4.1993 as an internal arrangement on the written request of the Development Adviser as the nature of the duties of the applicant as Dy. Director (Civil) in the IWT Wing and as Dy. Director (Civil) in the Development Wing were similar.

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It is further submitted that the respondents have misconstrued the provisions in the Recruitment Rules and wrote to the DOP&T for relaxation of the condition of 5 years of regular service, which in fact was uncalled for as the applicant was not lacking in the requirement of 5 years regular service in the grade as per the Recruitment Rules.

13. We have heard the learned counsel for the parties and have gone through the records of the case.


14. The only controversy in this case is whether the service rendered by the applicant in IWTD and subsequent to that in the Development Wing of Min. of Surface Transport can be counted or not for the purpose of promotion. According to the respondents the IWTD was an attached non-participating office so the services of the applicant rendered in IWTD could not be considered. However, we find that the respondents cannot wriggle out of their own letter Annexure R-I dated 26.3.1987 vide which the respondents had exercised its power under Clause (f) of Sub-Section-II of the Inland Waterways Authority of India Act, 1985 and the services of the applicant were placed on the strength of the Min. of Surface Transport. This does not show that if at all he was taken on the ITWD Wing of the Ministry of Surface Transport. Even the applicant had exercised option to be absorbed in the IWAI but the applicant was found to be surplus and was retained in redeployment against one of the ex-cadre post vide Annexure R-4. Thus in a way the applicant had been working in the Min. of

Surface Transport even after the constitution of IWAI against the post of Dy. Director (Civil) and subsequently he was transferred to Development Wing of Min. w.e.f. 2.4.93. So the question arises whether the services rendered by the applicant prior to his transfer to the Development Wing is to be considered for the purposes of promotion to the post of Director (Development). Since the applicant had rendered services as Dy. Director (Civil) in the same ministry though from 1983, i.e., from the date of his initial appointment till 20.2.1987 in the IWTD but from 20.2.1987 onwards when his services were taken on the strength of Min. of Surface Transport as per Dy. Director (Civil) so the respondents cannot deny him the benefit of the services rendered by him at least from the date when he was taken on the strength of Min. of Surface Transport vide Annexure R-I when his services were put on the strength of Min. of Surface Transport. The respondents have not taken any plea that the duties performed by the applicant were in any case short of requirements for the post of Director (Development). The fact that the respondents themselves have transferred the applicant to the Development Wing subsequently that itself would go to show that the applicant had been performing same type of functions which he continued to perform even on transfer to the Development Wing. So by no means the applicant can be denied the benefits of the past service rendered by him as a Dy. Director and particularly so when he was on the strength of Min. of Surface Transport.

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15. Hence, we are of the considered opinion that the applicant was available for being promoted to the post of Director (Development) and the action of the respondents for resorting to direct recruitment is in violation of Articles 14 and 16 of the Constitution of India and is also against the principles of natural justice and the same is liable to be quashed.

16. In view of the above, we allow the OA and direct the respondents to consider the applicant for promotion to the post of Director (Development) when the vacancy became available. No costs.


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


(Kuldeep Singh)
Member (J)

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