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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 56/1997

New Delhi this the 19th Day of May 1997.

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri K. Muthukumar, Member (A)

Shri R.S. Sisodia,
Assistant Commissioner/Fishery (Refrigeration)
Ministry of Food Processing Industries,
Panchsheel Bhawan,
New Delhi-110 049.

Petitioner

(Applicant in Person)

-Versus-

Union of India
Through the Secretary to the Govt. of India,
Ministry of Food Processing Industries,
Panchsheel Bhawan,
Khel Gaon Marg,
New Delhi-110 049.

Respondent

(By Advocate: Shri V.K.Mehta)

ORDER (Oral)

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The petitioner in this case has approached this Court for recruitment against the post of Deputy Commissioner (Fisheries, Planning) Group 'A', Gazetted, non-Ministerial in the Ministry of Food Processing Industries in the scale of Rs. 3700-5000. The respondent has sought to fill up the said post by transfer on deputation basis through an advertisement dated 1.11.1996. The main grievance of the petitioner is that he is available and eligible to the post of Deputy Commissioner in the Ministry of Food Processing Industries and the respondents are applying the recruitment rules of Ministry of Agriculture on the ground that this post has been transferred in the year 1988 to the Ministry of Food Processing Industries.

2. At the time when these posts were transferred to the Ministry of Food Processing Industries, the Notification in this regard granted one year time to the respondents to finalise the recruitment rules and it is stated that the respondents have not finalised the recruitment rules till today. Thereafter, in the year 1994 a direction was again given to the respondents to finalise the recruitment rules vide Annexure A-2. By Annexure A-6, dated 7.7.1994 it was again directed that the recruitment rules in this regard may be framed within one year thereafter and till today no recruitment rules has been framed yet the respondents are proceeding to fill up the post on the basis that the recruitment rules as available in the Ministry of Agriculture. The grievance of the petitioner is that till the recruitment rules are amended as directed, the respondents cannot fill up the said post on deputation basis since that would be a denial of the post to the petitioner who is available in the department. To bring a fresh appointee from outside, on the basis of unamended or absence of recruitment rules will be contrary to law. We find considerable force on the arguments advanced by the petitioner.

3. By an order dated 19.2.1997, this Court had passed an Interim Order stating that the process initiated to fill up the post by the Respondent shall be stayed and thereafter in response to Dasti notice reply was filed stating that the respondents have the power to fill up the vacancy even without the recruitment rules. We are afraid that filling up of the post on a regular basis inspite of

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the direction since 1988, without framing proper recruitment rules or amending the same, would be illegal and the respondents may not resort to any recruitment, without recruitment rules on the regular basis. We do not find any reasonable objection in case the respondents are filling up the post on the temporary basis before recruitment rules are finalised for regularly filling up the post. At the same time we are of the opinion that respondents should consider the candidature of the petitioner, in case the respondents decide to make appointments temporarily, pending the finalisation of the recruitment rules.

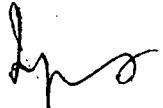
4. The learned counsel for the respondents stated that the vacancy now being decided to be filled up, is that of Deputy Commissioner (Fisheries) and the eligibility of the petitioner is to the post of Deputy Commissioner (Refrigeration). It was vehemently opposed by the learned counsel for the respondents that the petitioner is not eligible for the post which are being proposed to be filled up. We are unable to accept the submission for the reason that eligibility can never be tested against the post which the rules are yet to be created. In any event, we find on record that it has been proposed that the post is to be filled is neither in the "fisheries" side, nor in "refrigeration" It will have to be given a new and appropriate nomenclature in the Ministry of Food Processing Industries and the appropriate name could only be the nomenclature in the nature of "Deputy Commissioner - Food Processing". We are not imposing any new idea on the respondent's right to baptise the post with an appropriate nomenclature and it will be

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lawfully left to the respondents to consider the appropriate nomenclature. At the same time, it shall not have an effect of excluding the petitioner's claim altogether.

5. Our only anxiety is till then, that is to say, till the finalisation of the recruitment rules, the post can be filled up temporarily and consider the petitioner as well against post, which they may describe by any name.

6. We also find from the record that the Ministry of Personnel, Dept. of Personnel and Training, has suggested to constitute a common cadre both in the Ministry of Agriculture and Ministry of Food Processing Industries, when the recruitment rules are finalised. We are now concerned with the devious exclusion of the petitioner by bringing an outsider through 'transfer on deputation' under a obsolete rule which is according to the petitioner is not applicable to the present case. With these observations this OA is disposed of. There is no order as to costs.



(K. Mukthukumar)
Member (A)



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

Mittal