

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

32
1) O.A. NO. 71 OF 1994
2) O.A. NO. 2280 OF 1994

New Delhi this the 11th day of January, 1996.

HON'BLE SHRI N. V. KRISHNAN, ACTING CHAIRMAN
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

1) O.A. No. 71/1994

1. Shri S. D. Shukla S/o
Shri R. S. Shukla,
Deputy Director (F & VP),
Ministry of Food Processing
Industries, R/O C-152,
Nanakpura,
New Delhi-110021.

2. Shri N. D. Sharda,
Dy. Director (F & VP),
Ministry of Food Processing
Industries,
Old CGO Building, Marine Lines,
Bombay.

... Applicants

(By Shri K. C. Mittal, Advocate)

-Versus-

1. Union of India through
Secretary, Ministry of
Food Processing Industries,
Panchsheel Bhawan,
Khelgaon Marg,
New Delhi-110049.

2. Shri A. K. Paliwal,
Dy. Director (F & VP),
Ministry of Food Processing
Industries,
New Delhi-110049.

3. Shri V. V. Kotesewara Rao,
Dy. Director (F&VP),
Ministry of Food Processing
Industries, Shastri Bhawan,
Haddows Road,
Madras-6.

... Respondents

(By Shri M. M. Sudan, Advocate for Respondent
No.1, and Smt. Meera Chhibber, Advocate for
Respondent No.2)

2) O.A. No. 2280/1994

Shri V. V. Koteswara Rao
S/O Shri B. Sanapurniah V.,
Dy. Director (F&VP),
Ministry of Food Processing
Industries, Shastri Bhawan,
Haddows Road,
Madras.

... Applicant

(Applicant by Shri K. C. Mittal, Advocate)

-Versus-

33

1. Union of India through Secretary, Ministry of Food Processing Industries, Panchsheel Bhawan, Khel Gaon Marg, New Delhi.
2. Shri A. K. Paliwal, Dy. Director (F&VP), Ministry of Food Processing Industries, Panchsheel Bhawan, Khel Gaon Marg, New Delhi.
3. Shri S. B. Dongre, Plot No.53, D. No.4, Chetty Nagar, Camp Road, Opposite Selaipur, P.O. Madras-73.

... Respondents

(By Shri M. M. Sudan, Advocate for Respondent No.1 and Smt. Meera Chhibber, Advocate for Respondent No.2)

O R D E R (ORAL)

Hon'ble Shri N. V. Krishnan, Acting Chairman -

Both these Original Applications which raise similar issues were heard together with the consent of the parties and are being disposed of by this common order.

2. O.A. No. 71/1994 is a sequel to O.A. No. 348/1987 filed by the applicants, which was disposed of by the Annexure A-I judgment dated 30.1.1992.

3. Briefly stated, the applicants are Senior Inspecting Officers in the Directorate of Fruit and Vegetable Preservation. The next post of promotion is that of Deputy Director. The recruitment rules provide that 50% of the posts of Deputy Directors are to be filled up by promotion and 50% by direct recruitment.

4. On 29.11.1986, the 1st respondent (Ministry, for short) decided to fill' up two posts of Deputy Directors by direct recruitment and the Union Public Service Comission (UPSC) advertised these posts for recruitment on that date.

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5. The challenge in O.A. No. 348/1987 was to this advertisement which sought to fill up two vacancies by direct recruitment. The contention was that as there were only two vacancies, only one post could be filled up by direct recruitment and the other had to be filled up by promotion. Accordingly, the applicants prayed for the following reliefs :-

- "(i) declaring that the two posts of Deputy Director (F&VP), out of the two posts advertised for direct recruitment through Union Public Service Commission vide advertisement No.46 Item No.3 dated 29.11.1986 is meant for departmental promotee and should not be filled by direct recruitment; or
- (ii) in the alternative, direct the respondents that one vacancy which, according to the respondents, arose by appointment of Shri Desai, should be filled up by direct recruitment as if in 1979 or 1980, after calling the applicants also for interview."

6. The matter was considered in detail. The Tribunal noted that the post of Deputy Director was filled up according to the recruitment rules, that is, by filling up one vacancy by promotion and the next vacancy by direct recruitment, and so on. The first seven vacancies which had arisen on various dates, were so filled up, the seventh being filled up by a promotee on 26.2.1980. There was an 8th vacancy which was also filled up by a promotee (Shri A. S. Desai) on 26.2.1980.

7. Though the 8th vacancy should have been filled up by direct recruitment, yet it was filled up by promoting A. S. Desai. The reason for this deviation which was mentioned by the respondents in their reply, was noted by the Tribunal as follows :-

"4. Shri A. S. Desai was appointed in a vacancy which should have gone to a direct recruit according to the roster. The respondents have stated in their counter affidavit that on 30.6.1977, Shri B. S. Sood went on deputation to the Fruit Juice Bottling Plant. The vacancy caused by his deputation being a short-term vacancy could not be filled up by direct

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35

recruitment even though it was against the direct recruitment quota. When a short-term vacancy is caused by deputation of an officer for a period of more than one year, it is open to administration to treat that vacancy as a regular vacancy. It was, therefore, treated as promotion vacancy so that if and when the officer on deputation reverts back, the departmental promotee can be reverted. In these circumstances, Shri A. S. Desai was promoted against the short-term vacancy caused by deputation of Shri Sood."

8. The respondents submitted that as both the 7th and the 8th vacancies had gone to promotees, it was decided to counter-balance it by filling up the 9th and the 10th vacancies by direct recruitment and hence, the advertisement was issued through the UPSC. The Bench found merit in the contention of the applicants that filling up both the vacancies by direct recruitment would violate the rotation of vacancies as laid down in the recruitment rules. Therefore, the O.A. was disposed of with a direction to the respondents to treat one of the two posts of Deputy Director (F&VP) advertised through the UPSC for direct recruitment, as meant for being filled up by promotion.

9. Consequent upon this direction, the respondents issued the impugned Annexure-III order dated 28.5.1993, Referring to the judgment of the Tribunal, the following order was passed :-

"2. According to the judgment of the CAT in the aforesaid case, the Roster position of the Deputy Directors (F&VP) will be as under :-

Roster Point.	Mode of recruitment	Name of the incumbents S/Sh.
9th	Direct recruit	A. K. Paliwal
10th	Promotee	V.V. Koteswara Rao
11th	Direct recruit	S. B. Dongre"

10. The applicants are aggrieved by the fact that the 9th vacancy has been earmarked for direct recruitment whereas, according to them, this should be reserved for being filled

14

by promotee. Consequently, the 11th vacancy also should not be reserved for direct recruitment but should be open for being filled by promotion. Accordingly, the applicants have prayed for the following direction :-

- (a) declare the vacancy No.9 in the appointment roster of the Dy. Director (F&VP) i.e. the first of the vacancies advertised for direct recruitment through Union Public Service Commission vide advertisement No.48, item No.3 dat. 29.11.1986 is to be filled by 'promotee' in accordance with the judgement dated 30.01.92 of the Hon'ble Tribunal in O.A. No.348 of 1987 AND the vacancy No.11 meant for 'promotee' according to Recruitment Rules is to be filled by 'promotee.'
- (b) direct respondent No.1 that promotees should be deemed to have been appointed against vacancy No.9 & 11 with effect from the date of occurrence of these vacancies and be given all emoluments and retirement benefits accordingly.
- (c) quash the office order No.A32018/1/87-F&VP(Admn.)/126 dated 28.5.93 of Respondent No.1."

11. The 1st respondent, the Ministry, and the second respondent have filed separate replies opposing the application. The 3rd respondent filed M.A. No. 3423/1994 for his transposition as an applicant in the O.A. as he was in full agreement with the prayers made in the O.A. That M.A. was disposed of with the direction that if he wanted the same relief, he could file a separate O.A. which could be heard along with the present O.A. It is in view of this order that the 3rd respondent, V. V. Koteswara Rao, separately filed O.A. No. 2280/1994, which is the second case under disposal.

12. In their reply, the Ministry have contended that the O.A. is not maintainable as it is barred by the principles of res judicata. In regard to merits, it is contended that the impugned orders have been passed in pursuance of the judgment dated 30.1.1992 in the earlier O.A. No. 348/1987. The

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Tribunal merely directed that one of the two posts advertised by the UPSC should be filled up by promotion. It is contended that as the 8th vacancy meant for direct recruitment was filled up by promotion of Desai in the special circumstances mentioned earlier, it was decided, in pursuance of the Tribunal's order, to reserve the 9th vacancy for direct recruitment. It was filled up by the 2nd respondent, A. K. Paliwal, a direct recruit. The 10th vacancy was reserved for promotion. It was filled by the promotion of V. V. Koteswara Rao, respondent No.3. The 11th vacancy was again for a direct recruit and was filled up by the appointment of S. B. Dongre.

13. The second respondent has also raised the issue of res judicata. He has also opposed the application on more or less similar grounds.

14. We have heard the learned counsel for the parties, particularly, in regard to res judicata. Shri K. C. Mittal, learned counsel for the applicant strenuously contended that there was no bar of res judicata. In O.A. No. 348/1987, the direction was that one of the two posts advertised for direct recruitment should be treated as meant for being filled up by promotion. This does not mean that the Ministry can take any decision arbitrarily. If a wrong decision is taken, it is open to the applicants to challenge that decision.

15. That, however, may be true, but the question is whether the applicants should not have prayed in O.A.348/1987 for a declaration that the 9th vacancy should be treated for being filled up by promotion.

16. The prayers made in O.A.348/1987 as evident from the Annexure-I judgment, have been reproduced above in para 5. There is no prayer that the 9th vacancy should be declared as meant for being filled up by a promotee. It is evident from

para 5 and para 7 of the judgment that the applicants only prayed that one of the two posts advertised alone could be treated as for direct recruitment and not both the posts. The case of the applicants was that the 8th post was to be filled up by direct recruitment and, if it was filled by promotion due to certain special circumstances, that would not result in converting the 9th vacancy, which should be filled by promotion in the normal course, as a vacancy reserved for direct recruitment. In other words, when O.A. 348/1987 was filed the applicants had the same grievance which they are now ventilating. Therefore, they ought to have made such a prayer in their O.A. This is made clear in para 4(iv) of the O.A. wherein, inter alia, with reference to O.A. 348/1987 the applicants have stated as follows :-

"...The main contention of the applicants was that the vacancy No.9 in the appointment roster had to go to 'promotee' as it is meant for 'promotee' according to Recruitment Rules."
(emphasis added)

This is also repeated in the rejoinder of the applicants to the reply filed by respondent No.1. In regard to the reply to para 4(iv), the applicants have stated in the rejoinder as follows :-

"4(iv). The contention of respondent is incorrect and distortion of facts. The prayer in OA 348/87 was that out of the two posts advertised for direct recruitment through UPSC is meant for departmental promotee and should not be filled by direct recruitment. In other words the prayer was that vacancy meant for departmental promotee out of the two should be filled by promotee only. It is further clear from the alternative prayer that the vacancy in question is vacancy No.9 which was advertised for direct recruitment though meant for 'promotee' according to appointment roster as per Recruitment Rules..."
(emphasis added)

In other words, the applicants were clear in their mind that the 9th vacancy should have been declared as a vacancy meant to be filled up by promotee. If that be so, they were required to make such a prayer in O.A. 348/1987.

6

17. It is thus clear from their own admission that when the applicants filed O.A. 348/1987 they had the same grievance which they have now voiced in this O.A. If that be so, they should have clearly sought a declaration in this respect. Not having done so, this O.A. is barred by the principles of constructive res judicata and is, therefore, liable to be dismissed.

18. There is another ground on which this O.A. is liable to be dismissed. As mentioned above, the prayer is for a declaration that the 9th and the 11th vacancies shown in the impugned Annexure-III order as being filled by direct recruitment, should be filled by promotees. However, the applicants have impleaded only A. K. Paliwal, who has filled up the 9th vacancy as a direct recruit and V. V. Koteswara Rao, who has filled up the 10th vacancy as a promotee. They have not impleaded S. B. Dongre who has filled the 11th vacancy of a direct recruit. If the prayers of the applicants are allowed, S. B. Dongre would be left without an appointment as the only resultant vacancy for direct recruitment would be filled by A. K. Paliwal. In the circumstances, the O.A. is also liable to be dismissed due to non-joinder of necessary parties.

19. In the circumstances, both on the grounds of res judicata and non joinder of parties, O.A. 71/1994 is dismissed.

20. As far as O.A. No. 2280/94 is concerned, it has been filed, as mentioned above, by V. V. Koteswara Rao who was appointed as a promotee on the 10th vacancy and who was impleaded as the third respondent in OA-71/1994. He has prayed for quashing the Annexure-A order dated 28.5.1993 issued by the Ministry in pursuance of the Tribunal's direction in O.A.348/1987 and to declare the vacancies at Sl.

12

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Nos. 9 and 11 as meant for promotees. We are of the view that this application has to be dismissed on this short ground. When the Ministry and the UPSC advertised the two vacancies for direct recruitment, this applicant had no grievance at that point of time. It is only the two applicants in O.A. 71/1994 who were aggrieved by that advertisement and ^{who} filed O.A. 348/1987 on the basis of which a direction was given that one of the two posts advertised should be treated as meant for being filled up by promotion. The impugned Annexure-A order dated 28.5.1993 was passed in consequence of such direction. This applicant not having any grievance against the decision of the respondents' action, cannot now agitate against the decision of the respondents in Annexure-A. Therefore, the applicant has no locus standi to challenge the impugned Annexure-A order.

21. Accordingly, O.A. 2280/1994 is also dismissed. No costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

Ch
11/11/94

(N. V. Krishnan)
Acting Chairman

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