

Central Administrative Tribunal, Principal Bench

R.A.No.127/96 in OA No.1573/95

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this ~~4~~^{February} day of January, 1997

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Shri R.K.Garg
s/o late Shri Lakh Ram
r/o B-2/332, Lancer Road
Timarpur
Delhi. Applicant

(By Shri B.B.Raval, Advocate)

Vs.

Union of India through

1. The Secretary
Ministry of Information and Broadcasting
Shastri Bhawan
New Delhi.

2. Director General
Directorate of Advertising and Visual Publicity
P.T.I.Building
Parliament Street
New Delhi.

3. The Director (Publication Divn.)
Ministry of Information and Broadcasting
Patiala House
New Delhi.

4. The General Manager-cum-Chief Editor
Employment News
Publication Divisions
East Block IV, Level 7
R.K.Puram
New Delhi. ... Respondents

(By Shri V.S.R.Krishna, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

This Review Application is directed against the order dated 27.5.1996 in O.A.No.1573/95. Notice was issued to the opposite party. We have heard both sides.

2. The main ground taken in the Review Application is that there has been an error apparent on the face of record. It is pointed out that in Para 3 of the order it has been held that the applicant had not acquired the essential qualification of

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Diploma in Printing Technology from a recognised University/Institution or equivalent. It is submitted that notice was not taken of the fact that the applicant did indeed have the necessary qualification as the qualification of Post Graduate Diploma in Book Publishing (with specialisation in book production) from the Delhi University possessed by the applicant had been accepted by the respondents as equivalent qualification. Similarly in Para 7 of the order it has been observed that the applicant had been "promoted" to the higher post. Here also it is alleged that there was an error inasmuch as the applicant was never "promoted" but had been "appointed" directly on the post of Technical Assistant though on adhoc basis and on the basis of continuous adhoc services he was entitled to the benefit of Supreme Court judgment in Maharashtra Engineering Class II Direct Recruit Officers Association Vs. State of Maharashtra and Others, 1990(2) SLJ SC Page 40. This also resulted in the Bench committing an error, according to the Petitioner, when it observed that it was not in a position to grant any relief sought for since there was no provision for appointment on promotion.

3. We have heard Shri B.B.Raval on behalf of the review petitioner. He urged that the Government itself had recognised the qualification possessed by the applicant as an equivalent qualification, as could be seen from page 64 of the OA, which is a copy of the advertisement in the Employment News, namely, Government of India, Ministry of Health and Family Welfare's notification No.A-12026/1/93-Estt.III dated 12.7.1993. In that notification, for recruitment to the post of Publication Officer in the Department of Family Welfare, the technical qualification prescribed is "Diploma in Printing Technology /Photolithography/Book Production from a recognised University or equivalent." Clearly, counsel submits that this would

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establish the equivalence of the two qualifications in an analogous post which incidentally even carried higher pay scale and was in Group 'A'.

4. Shri B.B.Raval further urged that the appointment of the applicant was in the nature of a direct recruitment. This appointment was made as far as back as on 30.6.1981 when the 1961 rules were operative. The first essential qualification in those rules was "A licentiate in Printing and Technology or a Graduate of a recognised University". The applicant was a Graduate of a recognised University and therefore at the time of such appointment he possessed the requisite qualification. The learned counsel argued that it was not the case of the applicant that he had been promoted from the post of Library Assistant and the Bench fell into an error by overlooking this essential point.

5. Shri V.S.R.Krishna, learned counsel for the respondents on the other hand would submit that there was no error in the order passed by the Tribunal as the applicant did not have the requisite qualification. At the same time, it was a case of the respondents that the appointment was not in the nature of direct recruitment and therefore, was de'hors the recruitment rules.

6. We have carefully considered the submissions and arguments of both sides and find that the contention of the applicant that there has been an error apparent on the face of record is not correct. The fact that Government of India in another Ministry in the case of a different post of a different rank has decided to treat Diploma in Printing Technology or Diploma in Photo Production as an alternate qualification has no bearing on the recruitment rules in respect of the post of Technical Assistant in the Ministry of Information and

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Broadcasting. If considering the job requirements such recognition of an alternate qualification was feasible a specific provision to that effect, could have been made here also. The provision of an alternate qualification, in another Ministry does not in our view constitute an equivalent for all posts in all departments and ministries of Government of India.

7. The second point urged by the learned counsel for the applicant regarding the claim of direct recruitment is in our opinion misplaced. The order dated 30.6.1981 (Annexure A4 of the OA) reads as follows:

"Director Publications Division is pleased to appoint Shri R.K.Garg, Library Asstt. to the post of Technical Assistant in the Employment News of this Division in the Pay Scale of Rs.550-750-EB-30-900 on ad-hoc basis w.e.f. 30.6.1981(F.N.) till further order vice Shri A.K.Sharma, appointed as Asstt. Production Manager in the D.A.V.P.

The above ad-hoc appointment is only a stop gap arrangement and will not confer on the official concerned the seniority etc. in the grade he has been appointed on ad-hoc basis unless he is appointed on regular basis to that grade."

8. It is clear that the appointment of the applicant to the post of Technical Assistant was not on the basis of direct recruitment as the post was neither advertised nor the appointment was made on the recommendation of a selection body such as the UPSC. The appointment of an employee in the same office without going through the procedure of direct recruitment could only if at all be made through the promotion process. However, as was noted by us in the impugned order, there was no provision in the relevant recruitment rules for promotion. Hence the appointment of the applicant was clearly de'hors the rules. Such an appointment as noted in the impugned order would be untenable in terms of J & K Public Service Commission Vs. Dr. Narinder Mohan & Others, 1994 Vol.27 ATC Page 56, since where rules provide for direct recruitment, every eligible

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candidate is entitled to be considered, and inviting applications for recruitment to fill in the notified vacancies is consistent with a right to apply of qualified and eligible persons.

9. In the light of the above discussion, finding no merit in the contentions of the Review Petitioner, the RA is dismissed. No costs.

Rao
(R.K.AHOOJA)
MEMBER(A)

/rao/

Haridasan
(A.V.HARIDASAN)
VICE-CHAIRMAN(J)