

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

C.P.NO.501/2002
M.A.NO.2608/2003
IN
O.A.NO.1626/1996

this the 3rd day of March, 2004

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Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S.A.Singh, Member (A)

Shri A.K.Das (Applicant No.1) & Ors.
S/o Shri N.N.Das, Aged about 63 years,
R/o BC/50, DDA Flats, Munirka,
New Delhi and retired as Industrial Adviser from
Dept. of Chemicals & Petrochemicals
and Fertilizers. ... Petitioners.

(By advocate: Shri S.S.Tiwari)

VERSUS

Shri Vijay Kohli,
Secretary, Department of Chemicals & Petrochemicals,
Shastry Bhawan, New Delhi. ... Respondent.

(By Advocate: Shri A.K.Bhardwaj)

O R D E R

By Shri S.A.Singh, Member (A)

On closure of the Directorate-General of Technical Development (DGTD) the applicants were transferred to the Department of Chemicals and Petrochemicals. For integration of the Technical posts a review of Recruitment Rules was considered necessary before ordering promotion. However, a proposal for promotion to Additional Industrial Adviser against two vacant posts was made as per existing recruitment rules. It was not agreed to and DOPT indicated that the rules should be suitably amended before taking action for filling up the posts.

2. The applicants filed an OA-1626/1996 praying that the respondents be directed to promote them as per

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existing Recruitment Rules. The Tribunal disposed of the OA with the following orders:-

"5. As far as the recommendations of the Fifth Pay Commission are concerned, they will be made applicable to Shri Bajaj and other candidates on the basis of their promotional posts to which they are entitled to be promoted under the Rules were dated 29.5.1997. Shri Bajaj will also be entitled to all consequential benefits based on the regular promotion to which he is held to be entitled under the present order. It goes without saying that on granting the promotion as directed, the resultant vacancies arising will also be filled up by promoting other candidates who are found eligible under the aforesaid rules. Directions contained in the present order be carried out expeditiously and within a period of three months from the date of services of this order."

3. Shri Bajaj mentioned in the order of the Tribunal had filed a separate OA 1585/1999, which had been clubbed along with the OA-1626/1998 and a common order had been passed. The respondents filed two Writ Petitions No.3367/2000 and C.M.No.5122/2000 challenging the order in the OA. The applicant claims that he has not been considered for promotion for the posts of DDG(Chem) (now redesignated as Senior Director (Tech)) as per Rules dated 29.5.1997. He retired w.e.f. 01.6.1997 and the vacancies had occurred before his retirement i.e., on 01.01.1996 and 01.02.1996. It is the contention of the applicant that the respondents have deliberately violated the order of the Tribunal dated 21.2.2000 by not promoting him.

4. The applicant filed C.P. against

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non-implementation of the Tribunal's order dated 21.2.2000.

5. The matter was heard by the Tribunal on 22.7.2003. During the course of arguments, the exact date when the rules would come into effect, became a point of dispute. The High Court in its judgement had indicated that they had come into force w.e.f. 25.5.1997 though they had been published in the Gazette on 14.6.1997. The Tribunal directed that the respondents should obtain a clarification ~~available~~ ^d from the Hon'ble High Court as to the exact date from when the Rules came into effect. The High Court vide order dated 26.9.2003 pointed out that the court had not examined this aspect as it was not required to go into this point. But stated that it is borne out from the record that the rules were published subsequently, i.e., on 14.6.1997

6. The short question before the Tribunal is the date when these rules come into effect for giving benefits to the applicant. A copy of the Notification, published in the Gazette dated 14.6.1997 is available at Annexure A-2. The relevant portion of the Notification in the Gazette is as under:-

"Ministry of Chemicals and Fertilisers
(Department of Chemicals and Petrochemicals)
New Delhi, the 29th May, 1997.

G.S.R.256-In exercise of the powers conferred by the proviso to article 309 of the Constitution, and in supersession of the Directorate General of Technical Development (Deputy Director General) Recruitment Rules, Rural Development (Group 'A' posts) Recruitment Rules, 1982 the President hereby makes the following rules regulating the methods of recruitment to certain posts in the Department of Chemicals and

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Petrochemicals in the Ministries of Chemicals and Fertilisers, namely:-

1) Short title and commencement (1) These rules may be called the Department of Chemicals and Petrochemicals (Group A Posts) Recruitment Rules, 1997.

2) They shall come into force on the date of their publication in the Official Gazette."

7. The date of 29.5.1997 forming part of the Notification is not relevant for the purposes of determining the date when Rules came into force because it is specifically stated at Rule 1 (2), that they shall come into force on the date of their publication, in the official Gazette. They were published in the Gazette on 14.6.1997.

8. The respondents claim that they have complied with the orders of the Tribunal and have given details of the vacancies available under the recruitment rules in an additional affidavit dated 24.4.2003. The respondents have not taken into account two posts of Director (Tech) which had come under the deemed abolition category in 1996 and similarly an additional two posts of Senior Director (Tech) came under deemed abolition category in 1997. Applicants' contention is that the posts had not been abolished and in support they have placed a letter dated 1.4.2002. This letter shows that the two posts of Senior Director (Tech) were abolished with effect from the date of this letter thereby implying that the posts were available till 31.3.2002. The applicant further contends that ad hoc promotions had been given to S/Shri S.C.Bajaj and J.M.Garg to prevent deemed abolition of these posts as this was the

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averment made by the respondents in OA1584/1999 and OA 1063/2000. Further the plea of the posts coming under deemed abolition has been raised for the first time in the additional affidavit.

9. Respondents, however, fairly have put forward that if posts are held in abeyance or remain unfilled for a period of one year or more, they are deemed to have been abolished and cannot be filled up without reviving the same. Respondents had taken up the issue of promotion through a proposal to the Department of Expenditure on 29.12.95 but they had instructed the deemed abolition would apply in the case of two vacant posts of Industrial Adviser even if action to fill up them was in hand in consultation with the UPSC.

10. Respondents rely upon the case of K.G.Derasari and Another vs. Union of India and Others (2001 10 SCC 496) averred that in an application for contempt the Tribunal only is concerned with the question whether the earlier decision had reached its finality and whether the same had been complied with or not. It would not be permissible for a tribunal or court to examine the correctness of the earlier decision which has not been assailed or reverse its earlier decision. As the rules are not being challenged. The order of the Tribunal has reached its finality and hence no further directions are needed.

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11. The applicant retired on 30.5.1997 and would be entitled to the benefits of the rules, if they had come into force before his retirement. Even though the rules had been finalised on 29.5.1997 they were published in the official Gazette on 14.6.1997. As per clause I (2) of the Rules the date of coming into force is the date of publication in the official Gazette which was published on 14.6.1997.

12. In view of the above, the respondents have complied with the order of this Tribunal as such no contempt is made out. With this observations C.P. is disposed of. Notices are discharged.


(S.A. Singh)

Member (A)


(Shanker Raju)

Member (J)

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