

12

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1381/2000

Wednesday, this the 25th day of April, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

Smt. Sushma Jain
Wife of Dr. Bimal Chand Jain
Joint Secretary and Legislative Counsel,
Legislative Department
Ministry of Law Justice and Company Affairs,
Govt. of India, Shastri Bhawan, New Delhi.
..Applicant
(By Advocate: Shri M.M.Sudan)

VERSUS

1. Union of India
Through the Secretary,
Legislative Department,
Ministry of Law Justice and Company Affairs,
Govt. of India, Shastri Bhawan, New Delhi.
2. The Cabinet Secretary,
Govt. of India, Cabinet Secretariate,
Rastrapati Bhawan, New Delhi.
3. The Secretary,
Ministry of Personnel & Public Grievances,
Govt. of India, Department of Personnel &
Training, North Block, New Delhi.
4. Sh. K.N.Chaturvedi, Joint Sec.& LC
Ministry of Law, Justice and Company Affairs,
Govt. of India, Shastri Bhawan, New Delhi.
..Respondents
(By Advocate: Shri N.S.Mehta for Respondents 1 to 3.
Shri Dinesh Kumar for Respondent 4.

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, M (A):

Aggrieved by the action of the respondents in not considering her for empanlment as Additional Secretary in the Ministry of Law, Justice and Company Affairs (Legislative Department), the applicant has filed the present OA. The main ground taken is that being a member of the Indian Legal Service, the applicant should have been considered for the aforesaid empanelment. The right to be considered flows from the constitutional provisions

2

and, according to the applicant, the same has not been honoured by the respondents. The respondents have contested the OA and have filed a reply in two parts, one by the official respondent Nos. 1 to 3 and the other by the private respondent No.4.

2. We have heard the learned counsel on either side in great detail and have perused the relevant documents placed on record.

3. Insofar as the claim of the applicant for being considered on the ground of being a member of the Indian Legal Service is concerned, the learned counsel appearing on her behalf has relied on the provisions made in the Indian Legal Service Rules, 1957. According to Rule 4 thereof, any person appointed to a duty post after the commencement of the Central Legal Service (Second Amendment) Rules, 1963 shall be a member of the service from the date of appointment. Rule 6-A thereof provides for appointment on deputation for a period of three years extendable, in a special circumstances, to five years.

4. The applicant who is admittedly originally a member of the service created by the Ministry of Law & Justice, Legislative Department, Official Languages Wing (Groups 'A' & 'B' Posts) Recruitment Rules, 1988 has been, again admittedly, taken on deputation against a post in Grade I of the Indian Legal Service. On this basis, the learned counsel for the respondents has sought to argue that the applicant being a deputationist cannot be regarded as a member of the Indian Legal Service. We are

d/

14

(3)

not inclined to agree for the reason that deputation is, after all, a method of recruitment provided in the Indian Legal Service Rules, 1957 and, therefore, having been appointed on deputation, the applicant will have to be considered as a member of the said service even if for a limited period of three to five years. It is admitted that on the date the search-cum-selection committee set up to empanel officers for the post of Addl. Secretary met, the applicant was very much on deputation and was, as held by us, a member of the Indian Legal Service.

5. Insofar as the question of rules to be followed for the purpose of empanelment aforesaid is concerned, our attention has been drawn to the Central Staffing Scheme dated 5.1.1996, the clarification rendered by the DOPT dated 4.1.1999 and to the memorandum issued by the DOPT again on 2.9.1999 constituting the search-cum-selection committee in question. At one stage, it was argued that the provisions of the Central Staffing Scheme would apply to the preparation of a panel as in this case. However, just a little later, on finding that the aforesaid memorandum of 2.9.1999 was the latest on the subject, though being in the nature of executive instructions like the earlier memorandum of DOPT of 4.1.1999 and the Central Staffing Scheme dated 5.1.1996, it was agreed that the same will hold the field.

6. That being so, for the reasons mentioned in the preceding paragraphs, we have no doubt in our mind that the applicant not only had the right to be considered but should actually have been considered by the aforesaid

2

15
(4)

search-cum-selection committee, more so because admittedly again everybody else belonging to the Indian Legal Service was considered by the committee. That action then not taken can now be taken by the respondents by re-organising a meeting of the aforesaid search-cum-selection committee in order to consider the claim of the applicant. This should be done as expeditiously as possible and in any event within a period of three months from the date of service of a copy of this order. The ad-interim order in force will remain in force till a decision has been taken by the search-cum-selection committee after considering the claim of the applicant in a fair and objective manner.

7. The OA is disposed of the in the aforestated terms. No costs.

S.A.T. Rizvi

(S.A.T. RIZVI)
MEMBER (A)

Ashok Agarwal
(ASHOK AGARWAL)
CHAIRMAN

|sunil|