

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.38/2000

New Delhi, this 2<sup>nd</sup> th day of December, 2000

Hon'ble Shri Kuldip Singh, Member(J)  
Hon'ble Shri M.P. Singh, Member(A)

S.P. Samuel  
E-140, M.S. Apartments  
K.G.Marg, New Delhi

.. Applicant

(By Shri S.K.Gupta, Advocate)

versus

1. Chairman  
Agriculture Scientist Rectt. Board  
Krishi Anusandhan Bhawan, PUSA  
New Delhi
  2. Director General, ICAR  
Krishi Bhavan  
New Delhi
  3. K.K. Gupta  
D-2, HSADL  
Indian Veterinary Research Institute  
Hathai Kheda Farm  
Anand Nagar, Bhopal
  4. Ved Prakash Kothiyal  
House No.3206, Pocket B&C, Sector A  
Basant Kunj, New Delhi
- .. Respondents

(By Shri N.S. Dalal, for official respondents, with  
Shri M.L. Ohri, Advocate for R-3 and  
Shri S.D. Raturi, Advocate for R-4)

ORDER

By Shri M.P. Singh

The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 challenging the action of the respondents to fill up the post of Director (Works) (DW, for short) by direct recruitment (DR, for short).

2. Brief facts of the case are that the applicant was appointed as Architect(TI) in ICAR through DR in the year 1997. He was given current charge of the post of DW with effect from 19.8.99. Before joining ICAR, the

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applicant was working as Architect (Group A) in CPWD and prior to that he was engaged in private practice as an Architect from 1990 to 1993. As per the applicant, he fulfilled all the essential qualifications for the advertised post of DW. Similarly he is also having experience of four and half months as DW, besides having held Group A post in CPWD for 4 years. The post of DW falls in the category of T-9 in the pre-revised scale of Rs.3700-5000. Rule 8.1 of the Technical Service Rules of the ICAR provides as follows:

"Normally, there will be direct recruitment only in the lowest grade in each of the three categories. However, direct recruitment to the other grades in the three categories may also be done in order to correct imbalances in staff composition in those grades"

Since T-9 Grade does not fall in the category of DR, the senior-most officer in the category should be given next grade on the basis of seniority-cum-fitness and the applicant is the senior-most in the feeder category, he ought to have been promoted to the post of DW on regular basis.

3. As per the advertisement, it has been mentioned that persons having Diploma (two/three years) or Bachelor Degree in the relevant field with five years experience are eligible for appointment to the post of DW. There is no separate experience for Degree or Diploma holders and hence the advertisement which has been issued without any basis has no value in the eyes of law. Applicant submitted his representation on 14.1.2000 but there has been no response.



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4. Respondents have received a large number of applications in response to the advertisement but they have short listed certain candidates and called them for interview. Applicant has not been called for interview. Aggrieved by this, he has filed this OA praying that the advertisement dated 17.4.99 be set aside and direction issued to the respondents to treat/convert current charge of duties of DW, ICAR by the applicant as regular charge. He has sought further direction that in the interview which was scheduled to be held on 10.1.2000 applicant should also be considered for selection.

5. Respondents have contested the case and have stated that the post of DW falls on DR quota, as such their action in filling up the post by DR is justified. Simply holding the current charge of the post of DW does not entitle the applicant to be considered for the post. When candidates with higher qualification and experience are available, respondents are well within their right to short list the candidates. Applicant has provisionally been considered in view of the interim order of the Tribunal but he does not come within the zone of consideration as a result of the short listing. Since the applicant is not entitled for the main relief, as such he is entitled for interim relief also. In view of the aforesaid reasons, OA has no merit.

6. One Shri K.K. Gupta who was also interviewed by the selection committee has also been impleaded as R-3 through MA No.858/2000. Thereafter one Shri Ved Prakash Kothiyal who has been interviewed and selected for the post of DW has got himself impleaded as R-4 (through MA

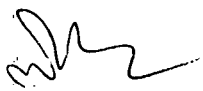


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No.2643/2000). He has filed counter reply to the OA and has stated that the applicant has attended the interview held on 10.1.2000 but he has not been found suitable by the selection board and accordingly his candidature was rejected. Having regard to the brilliant career of Shri Kothiyal, he has been considered most suitable and meritorious amongst all the contestants and was selected by R-1 in the interview held on 10.1.2000 for the post of DW in the scale of Rs.12000-16500. The same being a selection post, he has been offered the appointment vide OM dated 3.7.2000. There has been no violation of rules in this regard. Shri Kothiyal joined duty on 29.9.2000.

7. During the course of the arguments, learned counsel for the applicant stated that as per the R/Rules, there is no DR element for the post of T-9 category. Respondents have, therefore, to justify their action that the post has been filled up by DR to correct imbalances in staff composition in that grade. According to him, applicant possesses all the qualifications required for the post and he being senior most in the grade should be promoted to the post. On the other hand, the learned counsel for the respondents stated that though there should be no DR at the level of T-9, it does not preclude the Council its rights to fill up the post by DR. R/Rules provide for 5 year service in the grade for promotion to the higher grade which the applicant does not possess and hence he could not be considered for promotion. Therefore it was decided by the council to fill up the post by DR as the post cannot be kept vacant for long.




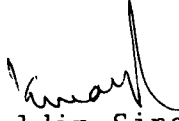
9. Shri Raturi, appearing for R-4, submitted that it is for the selection committee to select the best candidate available. When a large number of persons having higher qualifications are available, they are to be called for interview. R-4 was found to be best candidate and he has been rightly selected for the post of DW. In support of his argument, he drew our attention to the judgements in the case of UOI Vs. T.Sundararaman & Ors. (1997) 4 SCC 664 and in the case of MPPSC Vs. N.K.Potdar & Anr. (1994) 6 SCC 293. In both these cases, the apex court upheld the action of the selection committees in short listing the candidates possessing higher qualifications. In the latter case, the apex court have categorically held that the process of short listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus and short listing is part of the process of selection; the selection board can adopt any rational procedure to fix the number of candidates who should be called for interview. It was further held that 'if with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience'.

10. Though R/Rules do not provide for DR at T-9 level, if persons with requisite length of service/qualifications in feeder cadre are not available for promotion, the action of the Council in correcting imbalance in staff composition and thereby calling short

listed persons with higher qualification and longer experience through the advertisement and selecting the best candidate among them cannot be faulted. In the present case, the applicant does not possess the requisite experience in the feeder grade for promotion to the post of DW nor he has been selected for the post by the selection committee. Hence, he has no claim for appointment to the said post. Merely holding the current charge of the post of DW does not entitle him for appointment to the post on regular basis.

11. In view of this position, we do not find any merit in the OA. The same is dismissed. No costs.

  
(M.P. Singh)  
Member(A)

  
(Kuldip Singh)  
Member(J)

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