

13

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 459/2000

New Delhi this the 24th day of January, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI SHANKAR PRASAD, MEMBER (A)

Dr. Murari Lal
S/o Late Shri Saktoo Singh
R/o 3, Atta-ur-Rehman Lane
Civil Lines
New Delhi-110054. Applicant

(By Shri N.S. Dalal, Advocate)

-versus-

1. Lt. Governor
Government of National Capital Territory
of Delhi
Raj Niwas
New Delhi-110 054.
2. Development Commissioner
Govt. of NCT of Dehi
5/9 Under Hill Road
Delhi-110 054.
3. Union Public Service Commission
Through its Chairman
Dhaulpur House
Shahjahan Road
New Delhi. ... Respondents

(Shri Mohit Madan, proxy for Smt. Avnish
Ahlawat, counsel)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

Applicant, Dr. Murari Lal, was selected as a Project Officer in the Development Department in 1977. He was transferred on 9.3.1981 to an equivalent post of Deputy Director (Horticulture) in the Development Department of the National

JS Ag

Capital Territory of Delhi. He worked there till 1989. He was promoted as Joint Director (Agriculture) on 13.7.1989.

2. Vide the order dated 26.8.1996, on the recommendations of the Union Public Service Commission, the applicant was appointed as Director (Horticulture) on deputation basis in the pay scale of Rs.3700-5000/- for a period of one year.

3. By an order dated 24.9.1997, he was repatriated to his original post of Joint Director (Agriculture). The applicant pointed that the post of Director (Horticulture) was advertised vide Annexure P-4 dated 1.7.1998. According to him, the Union Public Service Commission would select a new candidate and that he should be declared to have already been selected to the post of Director (Horticulture) and deemed to have been promoted on regular basis. He prays that respondents should be refrained from proceeding with the selection of Director (Horticulture) in pursuance of the advertisement of 1.7.1998.

4. Earlier, this matter had come up for hearing before this Tribunal on 11.7.2000. This Tribunal had dismissed the application holding that the applicant had come to this Tribunal with unclean hands. He was not entitled to any

CS Ag e

equitable relief. Aggrieved by the same, the applicant had preferred Civil Writ Petition No.4420/2000 and the Delhi High Court remitted the matter back to this Tribunal opining that it was not a fit case where the application should have been dismissed on the abovesaid ground. At best, the interim order could well have been vacated. It is in this backdrop that the matter has again been listed.

5. In the reply filed, the respondents 1 and 2 have contested the application. It has been insisted that the applicant has made false assertions. However, it was pointed that the repatriation order was passed after obtaining the approval of the Lt.Governor. It had been decided not to give any extension to the applicant as a departmental enquiry was pending against him. On being repatriated, he joined as Joint Director (Agriculture) and is working against the said post. On repatriation of the applicant to the post of Joint Director (Agriculture), an order was passed on 1.10.1997 appointing Shri Divendra Kumar, Horticulturist as Head of Office in respect of Horticulture Unit of the department. On 5.4.1999, ~~when~~ the applicant handed over a letter dated 14.1.1999 issued by the Chief Secretary, Delhi to show that he was still the Director (Horticulture) which was incorrect. The letter of 14.1.1999 was

LS Ag

with reference to Development Commissioner's letter dated 18.9.1996 when the applicant was Director (Horticulture) and, therefore, the Chief Secretary's letter used the designation against the applicant's name as Director (Horticulture). It is denied that the applicant had been selected or had a right to continue in the post of Director (Horticulture) as referred to above.

6. After hearing the parties counsel, it is patent that the short question that comes up for consideration is as to whether the applicant can claim that he has been regularly selected and appointed as Director (Horticulture) in this regard.

7. Before doing so, we take liberty in delineating some of the facts which are not in controversy. On 26.8.1996, the applicant on the recommendations of the Union Public Service Commission was appointed as Director (Horticulture) on deputation basis for a period of one year. The said order reads:-

"On the recommendation of Union Public Service Commission, the Lt. Governor is pleased to appoint Dr. Murari Lal to the post of Director (Horticulture) on deputation basis on usual terms and conditions in the pay scale of Rs.3700-5000, with immediate effect for a period of one year in the first instance.

LS Ag 

He is also declared Head of Office in respect of Horticulture Unit in supersession of this office order No.F.56(212)/87/Dev.HQ/5034-44 dated 01.07.92."

On 1.10.1997 after repatriation of the applicant, Shri Divendra Kumar, Horticulturist was declared as Head of Office with respect to Horticulture Unit of the Department. The said order reads:-

"Consequent upon repatriation of Dr.Murari Lal, Director (Hort.) to his original post of Joint Director (Agriculture) vide this office order No.F.56(212)/87/Dev.HQ/3721 dated 24.9.97, Sh.Devendra Kumar, Horticulturist (Block Level) is hereby declared as Head of Office in respect of Horticulture Unit of this Department with immediate effect till further orders.

This issues with the prior approval of Development Commissioner."

8. The learned counsel for the applicant contends that the applicant had regularly been appointed in this regard and the question of his repatriation did not arise. In the first instance, the order of 24.9.1997 can be looked into which is in the following words:-

"Dr.Murari Lal, Director (Hort.) who is working on deputation to the post of Director (Horticulture) w.e.f. 26.8.1996 is hereby repatriated to his original post of Joint Director (Agriculture) with immediate effect.

This issues with the prior approval of Lt.Governor, Delhi."

LS Ag

The present application had been filed on 22.3.2000 that is after one year of the repatriation. It clearly shows that the order repatriating the applicant cannot be successfully assailed because the period of limitation has long expired. There is no application seeking condonation of delay. Necessarily, the application on this short ground is liable to fail.

9. Otherwise also, even if the merit of the matter is looked into, the net result would be the same. A copy of the recruitment rules for the post of Director (Horticulture) has been produced before us. Under column 12 thereto, the method of promotion has been prescribed which reads:-

"Promotion/ transfer on deputation (including short-term contract): 1) Officers of the Central/ State Governments/ UTs /Autonomous organization/ Public Sector Undertakings/ Research Institute/ Universities/ Semi-Govt. organizations etc. a) I) holding analogous posts on regular basis, or II) with 4 years regular service in posts in the scale of pay of Rs.3000-4500 or equivalent; and b) possessing the qualifications and experience prescribed for direct recruits under column 8.

(2) The departmental Deputy Director (Hort.) will also be considered along with outsiders. In case he/she is selected for appointment, the post shall be deemed to have been filled by promotion.

The departmental officers in the feeder category who are in the direct line of promotion shall not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion. Period of deputation

CS Ag e

including period of deputation in another ex-cadre post held, immediately preceding this appointment in the same or some other organization/department of the Central Govt. shall ordinarily not exceed 4 (four) years."

On behalf of the applicant, reliance was placed upon the fact that the departmental Deputy Director (Horticulture) is also to be considered and in case he/she is selected for appointment, the post should be deemed to have been filled by promotion. What cannot be ignored in this regard is that the selection must be made only in case the recruitment is effected and the promotion is made on permanent basis.

10. We have already reproduced above, the order appointing the applicant to the post of Director (Horticulture). It clearly shows that the applicant was appointed for a period of one year only on deputation basis. After one year, he was repatriated. When the order is clear and the language is plain, there is no ground thus to hold that the applicant had regularly been appointed. The argument in this regard which is being pressed vehemently necessarily must be rejected. There is no ground to hold that the applicant had regularly been so appointed.

18 Aug

29

-8-

11. Resultantly, the present application being without merit must fail and is dismissed. No costs.

Announced.

Shankar Prasad
(Shankar Prasad)
Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

/sns/