

9

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

DA No. 1913/2000

New Delhi: this the 24th day of August, 2000.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE MR. KULDIP SINGH, MEMBER (J)

J. L. Khushu,

D-II/2779,

Netaji C Nagar,

New Delhi-23

.....Applicant

(By Advocate: Shri G. K. Agarwal)

Versus

1. Union of India
through
Secretary,

Ministry of Urban Department,
Nirman Bhawan,
New Delhi -11.

2. The Appointments Committee of
the Union Cabinet (ACC)
through Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi-4.

3. The Secretary,
Department Personnel & Training,
(Ministry of Personnel,
Public Grievances & Pensions,
North Block,
New Delhi-1.

4. The Secretary,
Union Public Service Commission,
Shahjehan Road,
New Delhi-11

.....Respondents.

(By Advocate: Shri K. R. Sachdeva for official respondents.)

Shri P. P. Khurana for private respondents.)
Sr. Adv. with Ms. Namta Saha.

ORDER

Mr. S. R. Adige, VC (A):

Applicant seeks a permanent injunction to
respondents against any overt or covert interference
with applicant's regular promotion as Chief Engineer
(Civil) vide Annexure A/1 order dated 24.7.96 with
costs.

✓

2. Heard both sides.

3. Applicant had earlier filed OA No. 1219/98 seeking a direction to respondents restraining them from interfering with his promotion as CE (Civil) on regular basis vide aforesaid order dated 24.7.96. That OA was allowed to the extent that respondents were directed not to interfere with applicant's promotion order dated 24.7.96 (Annexure-A/1) by seeking to abolish the post of CE (Civil) held by him with effect from that date.

4. During hearing it has been contended by respondents, both official and private, that in the present case 20 vacancies were reported to UPSC for the post of CE (Civil) in 1995-96. By that time directions had been received from Finance Ministry on 9.6.95, that 4 posts of CE (Civil) or equivalent, be abolished under 10% cut, but these directions were ignored while reporting 20 vacancies to UPSC. In case of 20 vacancies, the zone of consideration included 44 officers as per para 6.1.1 of DP & AR's OM dated 10.4.89 in which case applicant fell within the zone of consideration but if the 10% cut as ordered by Finance Ministry was accounted for, and 4 posts of CEs including 3 posts of CE (Civil) were abolished, the vacancies would reduce to 17 and the zone of consideration would thus covers only 38 officers in which case applicant who was at due Sl. No. 40 would have been outside the zone of consideration. Respondents both official and private state that had the vacancies been correctly calculated applicant would not have come within the zone of consideration. It is this error which respondents state had occurred and which they now propose to correct by holding review DPC to

11

ensure that no unintended benefit accrues to anyone and also none is denied what is due to them.

5. We have considered the matter carefully.

6. Apart from the fact that Section 19 AT Act permits a person aggrieved by an order to approach the Tribunal, and applicant has not shown us any order adverse to him passed by respondents, any mandatory injunction of the type prayed for by applicant which pre-empts respondents from performing their legitimate tasks and correcting any error, would neither be fair, nor just, nor equitable. The question whether an error was committed in reporting of vacancies to UPSC for the post of CE (Civil) in 1995-96 is a question of fact and cannot be adjudicated upon at this stage. If consequent to any review DPC which respondents might hold, applicant is adversely affected, it will always be open to him to agitate his grievance in accordance with law if so advised, and if in the course of adjudication of the same, it is found that applicant has been put to vexatious litigation he can always be compensated by award of appropriate costs. On the other hand grant of the injunction prayed for by applicant at this stage might mean continuance of the unintended benefit to some and/or denial of benefit to those to whom it is due which would not be in the interests of justice.

7. During the course of hearing on the prayer for interim relief, we have already recorded the statement of Shri Sachdeva appearing for official respondents vide our order dated 30.6.2000 that applicant was not being reverted from the post of CE, pursuant to the exercise being undertaken by them.

~

2

8. In the light of the above, the prayer for permanent injunction prayed for by applicant in para 1 above, is rejected. The OA is dismissed. No costs.

Kuldip Singh
(KULDIP SINGH)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A)

/ug/