

(23)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./XXX. No. 1378/89 /19
Mrs. Ashi Kumar - applicant.

Decided on: 18.10.96,

With
O.A. 894/89
Mrs. Lalita Pali
(By Shri P.P. Khurana

..... APPLICANT(S)
Advocate)

VERSUS

Delhi Administration & others. RESPONDENTS

(By Shri Surat Singh
Advocate)

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THE HON'BLE SHRI S.R.ADIGE MEMBER(A).

THE HON'BLE SHRI S.R.ADIGE MEMBER(A).

1. To be referred to the Reporter or not? Yes.
2. Whether to be circulated to other Benches of the Tribunal? Yes.

S.R. Adige
(S.R.ADIGE)
MEMBER(A).

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CENTRAL ADMINISTRATIVE TRIBUNAL

Principal Bench

New Delhi, dated this the 18th October, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

O.A. No. 1378 of 1989

Mrs. Ashi Kumar,
W/o Shri N.Kumar,
E-62, N.D.S.E. Part I,
New Delhi-110049.

.... APPLICANT

VERSUS

1. The Delhi Administration
through the Chief Secretary,
Old Secretariat,
Delhi.
2. The Directorate of Technical
Education,
Delhi Administration, Rouse Avenue,
New Delhi.
3. The Principal,
Women's Polytechnic,
Delhi Administration,
Maharani Bagh,
New Delhi.
4. Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.

... RESPONDENTS

O.A. No. 894 of 1989

Mrs. Lalita Pali,
Dept. of Interior Decoration,
Women's Polytechnic,
Maharani Bagh,
New Delhi.

.... APPLICANT

VERSUS

1. The Delhi Administration,
through its Chief Secretary,
Old Secretariat, Delhi.
2. The Directorate of Technical
Education,
Delhi Administration,
Rouse Avenue, New Delhi.
3. The Principal,
Women's Polytechnic,
Delhi Administration,
Maharani Bagh,
New Delhi.

.... RESPONDENTS

By Advocates: Shri P.P.Khurana for the applicants in both O.As
Shri Surat Singh for the respondents

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

As these two O.As involve common question of law and fact they are being disposed of by this common order.

O.A. No.1378/89

2. In this O.A. the applicant Mrs. Ashi Kumar is seeking a direction to the respondents to extend the benefits of Madan Committee's recommendations to her and to appoint her as Lady Lecturer in Interior Decoration (pay scale of Rs.2200-4000) w.e.f. the date the posts of persons similarly situated have been upgraded with consequential benefits.

3. It is not disputed that she joined the Women's Polytechnic, Maharani Bagh, New Delhi as Demonstrator/Instructor (Rs.550-900) Interior Decoration vide appointment letter dated 1.10.75 (Ann. A-2), which post was subsequently upgraded to that of Junior Lecturer(I.D.) in the pay scale of Rs.650-960 w.e.f. 18.8.78 vide order dated 17.5.84 (Ann.A-3). Meanwhile the Madan Committee set up to examine the issue of revision of staff structures of Engineering Institutes submitted its report in March, 1978 and one of its recommendations was that the lowest teaching post in Engineering Institutes including Polytechnics should be lecturer.

and there should be no appointment to any post lower than lecturer e.g. Instructor, Asst. Lecturer, etc. In so far as persons who were already in position on such lower posts than lecturers were concerned, the Committee recommended that persons as fulfilled the minimum qualifications for the post of lecturers in that particular discipline should be adjusted against resultant posts of lecturers created by the implementation of the recommendation while those who did not fulfil those qualifications should be given adequate opportunities to improve their qualifications. These recommendations were eventually accepted vide respondents order dated 25.9.87 (Annexure A-5) by which revised staff structure based on those recommendations were issued.

4. According to the applicant, pursuant to that order dated 25.9.1987 51 persons holding the posts lower than that of Lecturers, but who fulfilled the necessary qualifications were made Lecturers and allowed the higher scale of pay, without facing any DPC/Selection Board, but although she fulfilled all the essential qualifications for appointment to the post, when the recommendations were accepted by Govt. She states that at that point of time the Recruitment Rules of 1989 were in force according to which the qualifications for the post of Lady Lecturer were

Degree or equivalent Diploma in
Fine/Commercial Art with
specialisation of Interior

Decoration & Display

or

Degree of a recognised University
with Training on Interior Decoration
and Display.

About two years teaching and/or
professional experience in Interior
Decoration & Display.

She contends that she possessed the following
qualifications right since 1975 and by 1978
had acquired three years teaching experience
besides two years experience in interior
decoration.

Graduation from Punjab University
with Fine Art as one of the subjects

Diploma in Interior Decoration from Women's
Polytechnic, Maharani Bagh, New Delhi.

5. She contends that despite being fully
eligible for upgradation to the post of
Lecturer in Int. Decoration, she was not
upgraded and submitted a representation on
12.3.89 but was never informed that she fell
short of the essential qualifications. It is
only in Sept. 1989 that she was verbally
informed that the Recruitment Rules had been
amended in Dec. 1984 whereby the essential
Qualifications prescribed were

- i) Degree or Diploma in Commercial
Art with specialisation in
Interior Decoration & Display
- ii) 1 year professional and/or
teaching experience in Interior
Decoration & Display.

The applicant asserts that she had been
assured all along by the respondents that
they now proposed to act in accordance with

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the 1984 amended Recruitment Rules but she was astonished to learn that in June, 1989 Respondents had issued an advertisement inviting applications for the two posts of Lady Lecturers in Interior Decoration wherein the educational qualifications prescribed were those contained in the 1984 amended Recruitment Rules. Her contention is that her case is covered by the unamended 1969 Recruitment Rules and she was eligible to be appointed as Lecturer in 1978 itself when the Madan Committee's recommendations were accepted, and any subsequent change in the Recruitment Rules cannot adversely affect her interest and disentitle her from getting benefits which have already accrued.

7. The respondents in their reply state that the applicant does not meet the qualification requirement for the post of Lady Lecturer in Interior Decoration as stipulated in the Madan Committee's recommendations and hence there is no question of upgrading her to the post of Lady Lecturer. They also contend that the two posts advertised by UPSC were created in 1977 and are not the posts created under Madan Committee which were created in 13th July, 1988. In this connection respondents contend that Govt. of India issued sanction of revised staff structure based on madan Committee's recommendations vide letter dated 25.9.87 in pursuance of which Delhi Admn. issued order

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13.7.88 regarding creation and abolition of certain posts (Annexure R-1). By that time the amended Recruitment Rules of 1984 were notified which were applicable in the case of the applicant and she did not qualify for the post of Lady Lecturer as per their amended 1984 Recruitment Rules.

O.A. No. 894/89

7. Similarly in this O.A., the applicant Mrs. Lalita Pali joined as a Studio Asst. in Dept. of Interior Decoration, Directorate of Tech. Education, Delhi Administration on 3.1.74 in the scale of Rs.550-900. On 1.2.84 the respondents invited applications for filling up three vacancies of Lecturer (Interior Decoration) in the scale of Rs.700-1300 on temporary/permanent (ad hoc) basis. The qualifications for the post as notified on 1.2.84 (Ann. A) were

Degree or equivalent Diploma in Fine/
Commercial Art with specialisation in
Interior Decoration and Display

or

Degree of a recognised University
with training in Interior Decoration
and Display.

About two years teaching and/or
professional experience in Interior
Decoration and Display
(Qualifications relaxable for
candidates other than well qualified)

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8. The applicant who is a graduate of Delhi University and is also a First Class Diploma Holder in Interior Decoration & Display from the Board of Tech. Education applied for the post. She states that she was interviewed on 11.6.84 and was duly selected and recommended for appointment, but for some reasons not known was not appointed. She was again interviewed on 3.9.94. Meanwhile consequent to lifting of economy ban respondents issued letter dated 6.11.85 (Ann. C) for filling up 1 post of Lady Lecturer in Women's Polytechnic, Delhi which had been lying vacant since 4.6.77 because of that ban, against which the applicant was appointed w.e.f. 8.11.85 on purely temporary and ad hoc basis for 6 months vide order dated 25.11.85 (Annexure D) which was extended from time to time.

9. The applicant contends that meanwhile consequent to the acceptance of the Madan Committee's recommendations she represented in March, 1989 for regularisation of her services as Lady Lecturer, but the same was rejected on 10.4.89 (Ann. H) and she was informed that she would be reverted w.e.f. 30.4.89 (Ann. I), although in respect of other similarly situated ad hoc appointees it stated by order dated 8.3.89 (Ann. J) that

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they would be regularised after obtaining UPSC's approval. Against that apprehended reversion the applicant filed this OA on 24.4.89 and interim orders were passed on 28.4.89 for maintenance of status quo as a result of which the applicant is still continuing as Lady Lectuter on ad hoc basis.

10. The respondents in their reply state that the vacancy of Lady Lecturer against which the applicant was appointed was notified on purely ad hoc and emergent basis.

In accordance with the Recruitment Rules prevalent at the time, the post being a Class I Gazetted post, it required selection being made through UPSC, but since there was emergent need for filling up the post, it was decided to fill up the same on ad hoc basis. The first interview was held on 11.6.84 and the second on 3.9.84, but no final decision was taken. Meanwhile, it is only after lifting of the economy ban on filling up of the vacant posts the applicant was appointed vide Respondents' letter dated 8.11.85 in which it was made clear that the appointment was purely on ad hoc and emergent basis and this ad hoc appointment will not confer on her any right to claim benefit of seniority or regular appointment to the post and this ad hoc appointment was liable to be terminated at any time without assigning any reason whatsoever.

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It is emphasises that the regular appointment could only be done through UPSC. It is further stated that at the time of ad hoc appointment of the applicant, the relevant Recruitment Rules which were applicable were notified on 1.4.69 (Ann. R-4) but these Recruitment Rules were superseded and new rules were notified vide Notification dated 13.12.84 (Ann. R-5) and as the applicant did not meet the requisite qualifications as per 1984 Recruitment Rules for the post of Lady Lecturer (ID) her name was not considered for appointment based on Madan Committee's Recommendations and hence she was not entitled to the benefit of those recommendations.

11. We have heard applicants' counsel Shri Khurana and the Respondents' counsel Shri Surat Singh.

12. In this connection we find that the Recruitment Rules for the post of Lady Lecturer (ID) which were framed in 1969 and amended in 1984, were again amended on 15.9.92, and were amended yet again on 21.5.96. Copies of the Recruitment Rules as amended from time to time have been taken on record.

13. From the Order Sheet dated 17.9.96 we also note that during the course of hearing on that date both counsel had stated that the 1969 Recruitment Rules require consultation with the UPSC for promotion to the post of

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Lecturer (ID) in the Women's Polytechnic, Delhi and accordingly both counsel had submitted, that in the background of those rules, the case of the applicant could be referred to the UPSC for regularisation.

14. In this connection appended with the Respondents' reply to MA-3029/94 in OA-894/89 copies of some notings from the relevant file relating to the applicant Mrs. Lalita Pali maintained in the office of the Respondents. From those notings it appears that the then L.G. in his note dated 5.7.89 had observed that even though the matter was in court (presumably he referred to the OA pending in the Tribunal) this should not inhibit in taking a view on merits and though on earlier he had approved reversion of the applicant, he felt that as she was selected in 1984 through SSB in accordance with the then Recruitment Rules and had been working as ad hoc Lecturer satisfactorily this was a fit case where a liberal view should be taken and efforts should be taken to regularise her in relaxation of the present Recruitment Rules as a special case as in his view the difference in her qualifications and what was required in the present Recruitment Rules did not appear to be so material in the discipline of Internal Decoration and he did not think that professional standards or the quality of education would be diluted if the applicant was regularised. However, in a subsequent note dated 22.2.90 the Secretary (TE) had stated

that the regularisation of the applicant in relaxation of the recruitment qualifications had been informally discussed in the UPSC whose advice was categoric that it would be difficult for them to make departure from the prescribed qualifications specified in the notified recruitment rules and her case could be accommodated only after the Recruitment Rules were amended. The Secretary (TE) had clarified that not in a single case had any ad hoc promotion been made of a teacher who did not fulfil the educational qualifications in the Recruitment Rules, and given this background the applicant Smt. Pali's case for regularisation could be taken up in the UPSC, till the Recruitment Rules for the discipline of ID were amended to suit her qualifications. Again in a note of the Chief Secretary dated August, 1991 a reference was made to the appointment of Smt. Pali, in which the Finance Secretary is supposed to have pointed a number of irregularities had taken place. Finance Secretary in his note date 13.1.92 had pointed out that the applicant had been appointed as Lecturer (ID) on the recommendation of the SSB which met on 3.9.84 and as per Recruitment Rules this post was to be filled through UPSC but despite that the deptt. had followed the irregular practice of filling up the post by appointing the applicant on ad hoc basis through local arrangement, thereby arrogating

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itself the role of UPSC. Further he had pointed out that even though she was selected on 3.9.84 she was actually appointed to the said post on 8.11.85 by which time the dept. initiated amendment to the Recruitment Rules which rendered the applicant ineligible because of the higher qualifications contained therein but despite that she was appointed on ad hoc basis and that appointment was extended from time to time. It is stated that the matter was again referred to the UPSC for regularisation who turned down the same on the ground that the recruitment to the post was required to be made through the normal direct recruitment system and advised the dept. to follow the proper procedure, but meanwhile the applicant had obtained the stay order from the Tribunal. He pointed out that the then L.G. wanted a sympathetic view to be taken, instead of acting on the orders of the L.G., the dept. suppressed the file till there was change in the incumbency of the L.G. and closed the chapter after submitting the matter to the Chief Secretary indicating the difficulties in implementing the L.G's orders. It was further pointed out that the dept. had meanwhile discovered that it was not able to get the requisite number of candidates possessing the higher qualifications contained in the amended rules notified in Dec. 84 and the UPSC could not locate suitable candidates in spite of best efforts and the dept. was again processing the

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procedure to amend the rules practically undoing the effect of the earlier modification and make the applicant again eligible for consideration for appointment. He sought whether Smt. Pali should now be regularised or the case be put in pending till the decision of the Tribunal as a good number of people had suffered or benefited in an undeserving manner because of the persistent irregularities committed by the dept. and its cavalier handling of the personnel matters, he further stated that the best course of action in all such cases where the dept. had made irregular ad hoc appointments in respect of posts for which recruitment was to be done through UPSC was to seek regularisation of ad hoc employees so appointed on a case to case basis. He further pointed that the dept. be advised to approach UPSC again for the regularisation in terms of upgradation under the Madan Committee's Report. A further note of the Joint Director dated 8.5.92 indicates that the Recruitment Rules on the basis of which the applicant was promoted on ad hoc basis provided for direct recruitment for the post if the dept. took her case for regularisation to the UPSC on the basis of her ad hoc appointment, they would not likely to agree because the mode of recruitment provided in the Recruitment Rules was direct recruitment, and the only alternative was to upgrade her under Madan Committee's Recommendations as soon as the

Recruitment Rules which had been approved by the UPSC were notified. Further discussion in the Respondents' file appears to be inconclusive.

15. In this connection our attention has also been invited to C.A.T., Principal Bench, judgment dated 13.7.95 in OA-1810/91 Mrs. Asha S. Kumar Vs. Delhi Admn.

16. In that case, the grievance of the applicant, who commence service as Studio Asst. in the Dept. of Beauty Culture of Women's Polytechnic, on 10.5.75 was a graduate and possessed a certificate in Beautician and she was still continuing in the entry grade without being promoted as Asst. Lecturer while one of her students had later been appointed as Junior Lecturer. Subsequently Mrs. Kumar was promoted on ad hoc basis w.e.f. 9.8.90 vide order dated 14.10.91. In that order it was stated that formal appointment order on regular basis would be issued only after the approval of the UPSC. Since applicant had already been appointed on ad hoc basis as Lecturer w.e.f. 9.8.90 her prayer for retrospective promotion as Lecturer w.e.f. 1.7.87 when the vacancy arose was rejected as she did not possess the prescribed qualifications as per the Recruitment Rules at that time, and that O.A was disposed of with a direction to the Respondents to finalise the process her regular appointment to the post w.e.f. the due date in case she had not yet been appointed as such.

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16. Having regard to the facts and circumstances of these two cases, we dispose of them with a direction to the respondents to examine the cases of the applicants for regularisation in consultation with the UPSC and pass a detailed, speaking and reasoned order within six months from the date of receipt of a copy of this judgment. No costs.

17. Let a copy of this judgment be placed on C.A. No. 894/89/501

A V Vedavalli
(DR.A.VEDAVALLI)
MEMBER (J)

S.R. Adige
(S.R. ADIGE)
MEMBER (A).

/GK/