

15

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO.1475/89

DATE OF DECISION : 21.12.1992

Shri R.P. Bhatia

...Applicant

Vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri B.S. Mainee, Counsel

For the Respondents

...Shri M.L. Verma, Counsel

1. Whether Reporters of local papers may be allowed to see the Judgment? *Y*
2. To be referred to the Reporter or not? *Y*

J. Sharma
(J.P. SHARMA)
MEMBER (J)

(P.C. JAIN)
MEMBER (A)

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

O.A. NO. 1475/89

DATE OF DECISION : 21.12.92

Shri R.P. Bhatia

...Applicant

vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri B.S. Mainee, Counsel

For the Respondents

...Shri M.L. Verma, Counsel

JUDGMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant was working in the capacity of Divisional Accountant, Ajmer Central Division, CPWD, Ajmer and was selected on deputation for the post of Assistant Cost Accounts Officer in Central Cost Account Pool, Ministry of Finance, Department of Expenditure on ad-hoc basis on usual deputation terms vide letter dt. 8.7.1980 (Annexure A2). In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the order dt. 24.2.1988 (Annexure A1) whereby the applicant was appointed as Assistant Director (Cost) on transfer basis w.e.f. 19.1.1988 and the representation of the applicant that he should be deemed to have been permanently absorbed w.e.f. 6.12.1980 was rejected by the order dt. 2.9.1988 (Annexure A7) and it is prayed that the impugned orders aforesaid be quashed and the applicant be ordered to be permanently absorbed w.e.f. 6.12.1980 when he actually joined the department.

17

2. The relevant facts are that Central Cost Account Pool (MOF) was constituted into regular Group 'A' Service, called the Indian Cost Accounts Service w.e.f. 4.9.1982. This service was constituted from amongst officers holding analogous/equivalent post in the erstwhile Central Cost Accounts Pool on regular basis in accordance with Rule 6 of of said Service Rules, 1982. At the time of initial constitution of the service, there was no provision in these rules for absorption for deputationist in the service. The mode of recruitment to the post of Assistant Director (Cost) was through direct recruitment only. Thus those officers who were on deputation had to revert to their parent department/post on completion of their normal period of deputation.

3. The case of the applicant is that his initial appointment and the deputation was for six months and continued to be extended on six monthly basis till the applicant was appointed in the service on transfer basis w.e.f. 19.1.1988. The absorption of the applicant, as alleged by him, is in terms of instructions/orders issued vide Notification dt. 18.6.1987 (Annexure A4). It is alleged by the applicant that Rule 8(iii) of the Indian Cost Accounts Service Rules, 1982 provides for the seniority of persons recruited to the service and it lays down that persons recruited to the service after the initial constitution shall be determined in accordance with the general instructions issued by the Government in the matter from time to time. The averment made in the application is that the

(18)

applicant stands senior to all the officers who joined subsequent to him in the department under Rule 7 of the Rules, which is meant for future servicing as the applicant was absorbed under Rule 6. The applicant has also averred that by virtue of the OM of the Department of Personnel and Administrative Reforms dt. 21.2.1983 (Annexure A5), the persons on deputation should be absorbed well in time, i.e., immediately after the expiry of their tenure of deputation. Those who are not to be absorbed should be reverted to their parent departments after the expiry of the fixed service. It is the case of the applicant that the entire ad-hoc service rendered by him be considered after his permanent absorption and all benefits for the purpose of his promotion and confirmation etc. be afforded to him under the normal operation of law, ^{and} that the action taken by the respondents to absorb the applicant w.e.f. 19.1.1988 instead of the date when he actually joined the department, namely 6.12.1980 amounts to arbitrary and colourful exercise of power. The applicant has alleged that he must be deemed to have been substantively appointed to the post of Assistant Director w.e.f. 6.12.1980.

4. The respondents contested the application and in the reply stated that the applicant has no case as under

↓

...4...

19
Rule 6 of the Rules, there was no provision for absorption of deputationists in the service. Subsequently, it was decided to amend the service rules and to provide for absorption of the officials who were on deputation on the crucial date of commencement of service and were still continuing on deputation by the Notification dt.18.6.1987, Sub Rule 6 under Rule 6 was provided, which is reproduced below :-

"The Union Public Service Commission shall constitute a Selection Committee similar to that specified in sub-rule (1) to determine the suitability of the Officers who were holding the posts of Assistant Cost Accounts Officer or Cost Accounts Officer on deputation basis in the erstwhile Central Cost Accounts Pool and continue to hold such posts on the date of commencement of the Indian Cost Accounts Service (Amendment) Rules, 1987 and who fulfil the prescribed qualifications for direct recruitment (excepting age) for their regular absorption in the Service as Assistant Director (Cost) or, as the case may be, Deputy Director (Cost) respectively. The Selection Committee shall also make recommendations about their inter-se-seniority. Officers appointed on the basis of the recommendations of the Selection Committee will be treated as regular Assistant Director (Cost) or Deputy Director (Cost), as the case may be, with effect from the date of meeting of that Committee. They shall all rank junior to the Officers already holding these grades on regular basis or who have already been selected by Union Public Service Commission for appointment thereto."

In accordance with the provisions in the amended Service Rules, a proposal to absorb the seven officers, namely S/Shri A.N. Bhardwaj, A.Ramanujan, A.N. Tuteja, R.P. Bhatia (applicant), K.Prana Murthy, V.K. Nayar and M.N. Bhoval, who were on deputation on 4.9.1982 and were willing for their absorption were absorbed on the recommendation of the UPSC and these officers were appointed as Assistant Director (Cost) in the Indian Cost Accounts Service w.e.f. 19.1.1988 vide Notification dt. 24.2.1988. As per the provisions of the Service Rules, inter-se-seniority of these officers has been decided by the commission and they are to be ranked junior to the officers already holding the post of Assistant Director (Cost) on regular basis. Also they are to be treated as regular Assistant Director (Cost) from the date of meeting of the Selection Committee which is dt. 19.1.1988 in the instant case. Rule 8(2) of the Service Rules, 1982 is applicable in respect of those officers, who were holding the post (whether on permanent or temporary basis) in the erstwhile Central Cost Accounts Pool on regular basis. The applicant was holding the post of Assistant Cost Accounts Officer (ad-hoc) in the erstwhile CCA Pool on deputation basis. He was absorbed in the Indian Cost Accounts Service in terms of new sub rule (6) under Rule 6 of the ICS (Amendment) Rules, 1987 which clearly states that officers absorbed under this sub rule shall rank junior to the officers already holding the post of Assistant

Director (Cost) on regular basis. The applicant, therefore, is not entitled to any kind of relief.

5. The applicant has also filed the rejoinder, in which the averments made in the application have been reiterated. In the rejoinder, the applicant has further alleged that Shri K.M. Prana Murthy was junior to the applicant, who was promoted as Deputy Director in the year 1982/83 and he continued to work as Deputy Director till the date of his retirement. The applicant represented for promotion to the post of Deputy Director followed by many reminders, but the respondents did not promote the applicant as Deputy Director.

6. The applicant also moved MP 3827/91 for adding sub para after para-8 in the relief that the Tribunal may be further pleased to direct the respondents to assign seniority to the applicant as Assistant Director (Cost) from the date from which he is continuously working on ad-hoc basis followed by regularisation with all consequential benefits of further promotion etc.

7. The respondents have also filed the supplementary reply that the basis of his seniority is fixed as per rules. The applicant was promoted as Deputy Director (Cost) w.e.f. 28.6.1990 and he has retired on superannuation as Deputy Director (Cost) on 29.2.1992.

↓

...7...

(22)

8. We have heard the learned counsel for both the parties at length and have gone through the record of the case. The main issue involved in the present case is whether the applicant should be deemed to be a member of the Indian Cost and Accounts Service, 1982 with effect from the date when he came on deputation on 6.12.1980 or he becomes the member of the service w.e.f. 19.1.1988 as per amended Rule 6 of the Rules, 1982. The learned counsel for the applicant has argued that since the applicant has worked since 1980 continuously on deputation and he was not reverted to his parent department, he should be deemed to have been regularised in the service with effect from the date when he joined on deputation. A perusal of the amended Rule 6 by which Sub Rule 6 has been added goes to show that it was only by virtue of the amendment by the Indian Cost Accounts Service Amendment Rules, 1987 quoted above that the applicant could become a member of the service. Merely because the applicant has worked on deputation will not make him a member of the service as he continued to be on deputation from his original post of Divisional Accountant, Ajmer, Central Division CPWD, Ajmer. It is a fact that the applicant has continued for more than 4 years, but it was in the hope that the service rules shall be amended and the applicant will get absorbed some day in the Indian Cost and Account Service. The applicant

(23)

cannot have his birth of a date earlier to his becoming member of the service according to the rules. The amendment which has come into effect w.e.f. 18.6.1987 will not divest the rights which have vested in the members of the service, who were on regular basis and were duly appointed as direct recruits. It is only by this amendment that the applicant has been given a right if he so wishes to be absorbed in the service on the basis of the provisions laid down under newly added Sub Rule 6. It was the option of the applicant whether to seek absorption on those terms as laid down in Sub Rule 6 or to seek repatriation to his parent department. When once the applicant has exercised his option of becoming a member of the service under the amended Rules, he cannot now resile from the same and claim membership of the service from a date when he was not eligible to be appointed to the service.

9. The learned counsel for the applicant has placed reliance on the authority of Direct Recruits Engineers' Association Vs. State of Maharashtra, reported in AIR 1990(2) SLJ p-40. There cannot be any regularisation in service de hors the rules. In the rules as existing prior to the amendment of Rules, 1987, Rule 6 clearly excluded deputationists from becoming members of the service on regular basis. The applicant also could not have any grudge on this account because he was serving on a Class 'C' post and had come

1c

(24)

on deputation to Class 'A' service and has drawn the benefits and emoluments while remaining on deputation.

10. As regards the seniority of the applicant, those who have already been recruited as regular members of the service by way of direct recruitment will definitely rank senior to the applicant because at the time when the direct recruits joined the service, the applicant was not a member of the service on regular basis. While absorbing the applicant as member of the service under Sub Rule 6, the Commission has clearly recommended that those persons who are absorbed by virtue of being on deputation on the date of the enforcement of the Rules of 1982 shall rank junior to those who are already members of the service appointed under Rule-7 of the Rules. The applicant has to be treated as a regular Assistant Director (Cost) from the date of the meeting of the Selection Committee as envisaged under Sub Rule 6 of the Rules w.e.f. 19.1.1988. Sub Rule 6 also lays down the criterion for fixing seniority of such officers, who are absorbed in the service.

11. The learned counsel for the respondents has also relied on the authority of Union of India & Ors. Vs. Syed Mohd. Raza Kazmi & Ors., 1992 (2) CSJ SC p-314. It has been held, "It is for the department to decide policies of promotion which

Je

25

will be consistent with the interest of all employees belonging to various cadres. It is not for the Administrative Tribunal or for the Courts to interfere with this and to dictate the avenues of promotion which the department should provide for its various employees." Thus it clearly lays down that the policies of promotion, unless arbitrary or discriminatory should not be interfered by the Courts.

12. In the present case, the applicant had joined on deputation seeing the service conditions existing at that time. In the unamended 1982 Rules, there was no provision for absorption of deputationists as regular members of the service. The applicant himself did not seek repatriation when he completed his tenure of deputation. The contention of the learned counsel for the applicant that there has been administrative delay in the process of amending the Rules as the proposal was under ^{consideration} ~~the~~ since 1984, but the actual amendment in the Rules has been effected in June, 1987 for adding Sub Rule 6 to Rule 6, will not by itself make the applicant as regular member of the service under the Rules. In such matters of amendment of the Rules, there is a time consuming process requiring consultation at various levels and with various departments.

13. Having given a careful consideration to all these aspects, there is no ground to interfere with the impugned

de

(26)

orders or to grant seniority to the applicant against those who have already been recruited regularly under Rule 7. Reliance on Rule 8(2) of the service rules has been misplaced by the learned counsel for the applicant. The seniority of the applicant has to be decided under Sub Rule 6 of Rule 6 as well as on the recommendations of the Union Public Service Commission for absorption of the applicant, referred to above.

14. The present application is, therefore, devoid of merit and is dismissed leaving the parties to bear their own costs.

J.P. Sharma

(J.P. SHARMA) 21.12.92
MEMBER (J)

(P.C. Jain)
(P.C. JAIN) 21/12/92
MEMBER (A)

AKS