

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1616/89

NEW DELHI THE 31ST DAY OF MAY, 1994.

**MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR.B.N.DHOUNDIYAL, MEMBER(A)**

Shri Janki Prasad
S/o Shri Ram Saran Maurya
R/o Block D/36, Shakurpur
Delhi-110 034. APPLICANT

BY ADVOCATE SHRI K.B.S.RAJAN VS.

1. Union of India through
its Secretary,
Vice President's Secretariat
6, Maulana Azad Road,
New Delhi.

2. Shri S.R.Lakkanaaoov
Assistant
Vice-President's Secretariat,
6, Maulana Azad Road,
New Delhi.

RESPONDENTS

BY ADVOCATE SHRI N.S.MEHTA.

JUSTICE S.K.DHAON: ORDER(ORAL)
The controversy in this OA pertains to
the appointment of an Assistant in the Vice President's
Secretariat.

2. The applicant feels aggrieved by the
appointment of respondent No.2 to the post of an
Assistant and his non-appointment to that post.

3. We may first refer to the Vice President's
Secretariat(Recruitment and Conditions of Service)
Rules, 1966(hereinafter referred to as the Rules).
The post of an Assistant falls under Schedule I
to the said Rules. In Rule 4, the methods of
recruitment are provided, one of them being by
promotion of a person already serving in the
Secretariat. Admittedly, the applicant and respondent
No.2 both were, on the relevant date, serving in
the Secretariat. The applicant, who was initially
employed as a Chowkidar-cum-Farash on officiating
basis, gradually stood promoted to the post of
Reception Officer. Respondent No.2 was, on the relevant
date, holding the post of an Upper Division Clerk. on

4. Rule 5 of the Rules states that the qualification which shall be required for eligibility for appointment to any post by departmental promotion or otherwise shall be such as the Vice-President may, from time to time, by general or special order, specify. The respondents have not been able to draw our attention to any general or special order of the Vice-President specifying the qualification for the post of Assistant.

5. Rule 7 of the Rules provides that the seniority of employees shall be determined in accordance with the general rules made from time to time by the Ministry of Home Affairs or, ⁱⁿ the absence of any such rules, in accordance with such rules as may be made by the Vice-President in this behalf after consultation with the Ministry of ^{the} Home Affairs. Again, it is not the respondents' case that the Vice-President framed any rule which may have had some relevance to the appointment of an Assistant. Therefore, we are relegated to the general rule framed by the Ministry of Home Affairs from time to time. The counsel for the applicant has urged that the general rule of promotion is seniority subject to rejection of unfit.

6. Sub-rule(1) of Rule 16 of the Rules may be referred to as reliance has been placed upon it by the learned counsel for the applicant. It posits that in respect of all matters for which no provision has been made in the Rules, the rules and orders issued by the Central Government from time to time for officers of equivalent rank, shall apply.

7. The Rules referred to above alone are relevant to the present controversy. We may state that our attention has not been drawn to any ^{specific} rule or order issued by the

Central Government from time to time for the purpose of appointment to the post of an Assistant. Reliance is, however, again placed on the general rule of seniority subject to rejection of unfit.

8. A detailed counter-affidavit has been filed on behalf of the respondents. Therein, the material averments are these. The applicant was

7 appointed as/Reception Officer in the Vice-President's Secretariat on 16.2.1987. Respondent No.2 was

appointed to officiate as Assistant on 1.1.1989, taking into consideration his merit, suitability and tried ability to handle the work of an Assistant.

Earlier he had been given 5 officiating chances on different dates ranging from September, 1985

to May, 1988. In all, before his appoint^{ment} on 1.1.1989, he had put in 202 days of service as/ officiating

Assistant. The decision to promote respondent No.2 was taken after taking into consideration all relevant aspects, including the representation made by the applicant. Respondent No.2 has put in 6 years and 4 months of total service as U.D.C.

7 before his promotion as/Assistant. The applicant, was, at no stage appointed to officiate as/ temporary

Assistant. However, he was appointed as L.D.C at some stage. The application of the applicant for being

9 appointed as/ Assistant was duly considered in an objective and impartial manner before finalizing the appointment of respondent No.2. Whereas

Shri Verma, Lal Pathania and Nagral were promoted as Assistants from the post of Reception Officer,

late Shri B. Satyanarayana, late Shri G.L.Kapoor and Shri N.K.Rao were appointed from the post of

U.D.C. The work of an Assistant in the Vice-President Secretariat involves reasonably good knowledge and command over English and demands a lot of correspondence in English, Office Accounts, checking of pay Bills, disbursement of cash, maintenance of registers, liaison with Pay and Accounts Office,

service-books, leave records, budget preparation etc. The applicant was earlier appointed as L.D.C(Hindi) on account of his limitations. A Reception Officer is normally required to do field work(procuring things, making arrangements for meetings/breakfast etc.) and does not have to do much of correspondence. Since the applicant was found suitable for the job of a Reception Officer, he was promoted to that post superseding Shri Anand Singh, the seniormost U.D.C. at that time ^{not} who was / found suitable for the post and subject to the condition that the promotion will not automatically entitle him to claim future promotion as an Assistant. Seniority by itself does not outweigh merit, suitability and experience. the applicant was duly considered but he was not found suitable for the post. His C.R. for 1988 stated that he is "not yet fit" for promotion. Respondent No.2 was found fit for promotion and was appointed as an Assistant after due consideration of all aspects. The selection was made by the competent authority(the Vice-President) on the basis of merit, experience, officiation, for five times, suitability and seniority. Realising that the non-promotion of the applicant as an Assistant may mar his chances of promotion in any future vacancy, he(the Vice-President) was gracious enough to recommend the upgradation of the post of Reception Officer held by the applicant as equivalent to the post of an Assistant.

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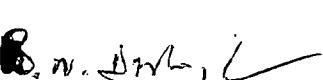
9. In the absence of any rule express or implied, the rule which should normally be applied is of equity, justice and good conscious. We have, therefore, to see whether the Vice-President acted fairly in selecting respondent No.2 and in rejecting the candidature of the applicant. The averments made in the counter-affidavit clearly go to show that the Vice-President took into account the relevant matters and matters germane to the appointment of an Assistant. There is no allegation of malafide or bias on the part of the Vice-President nor could there be any such allegation. What has to be seen in the case of a judicial review is fairness-in-action. We are satisfied that the Vice-President did not act arbitrarily in rejecting the applicant and in preferring respondent No.2. No case, therefore, exists for interference.

10. The learned counsel for the applicant urged that the entry "not yet fit" for promotion was stigmatic in character and, therefore, the same could not be taken into account without communicating the same to the applicant and without affording him an opportunity to make a representation against it. We are satisfied that such an entry did not require communication. It had been made only for the internal use of the department. In spite of the said entry, the Vice-President had recommended that the post of Reception Officer should be upgraded to that of an Assistant. Thus, it is clear that the said entry was not considered to be adverse by the Vice-President. It was used only for the purpose of picking out respondent No.2 in comparison to the applicant.

11. Assuming the rule of seniority subject to rejection of unfit was applicable, it appears to us that such an criterion was in the mind of the Vice-President. In view of the entry in the C.R. of the applicant "not yet fit", the Vice-President kept in mind the overall picture having regard to the onerous duties of an Assistant. There is nothing to suggest that the factor of seniority which was in favour of the applicant was ignored.

12. The last contention is that respondent No.2 could not be appointed as an Assistant as he did not hold the post of a Reception Officer. The respondents, in the counter-affidavit, as already indicated, have given 3 instances where U.D.Cs were straightway appointed as Assistant without being promoted to the posts of Reception Officer. Again, in the absence of any rule, no infirmity or illegality can be attached to the appointment of respondent No.2 as an Assistant from the post of an Upper Division Clerk.

13. We find no merit in this OA and the same is dismissed but without any order as to costs.


(B.N. DHOUDIYAL)
MEMBER(A)


(S.K. DHAON)
VICE-CHAIRMAN(J)

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