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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-570/89

New Delhi this the 20th Day of May, 1994.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman(A)
Hon'ble Sh. B.S. Hegde, Member(J)

Dr. C.K. Mondal,
S/o Dr. K.P. Mondal,
R/o A-30, South Extension,
Part-I, New Delhi.

Applicant

(By advocate Sh. R.P. Oberoi)

versus

1. ~~Union of India~~,
through the Secretary,
Dept. of Environment,
Forest and Wildlife,
Ministry of Environment,
Government of India,
New Delhi.

2. ~~The Director~~
National Zoological Park,
Mathura Road,
New Delhi.

Respondents

(By advocate Sh. M.K. Gupta)

ORDER
delivered by Hon'ble Sh. N.V. Krishnan, Vice-Chairman(A)

The applicant is employed as Assistant Veterinary Officer in the National Zoological Park, New Delhi, under the second respondent, its Director. He is aggrieved by his reversion from the post of Veterinary Officer to the post of Asstt. Veterinary Officer, formerly, designated as Senior Technical Assistant. A representation made by him to the Minister has been rejected by the Annexure-1 memorandum dated 11.4.1988. He is also aggrieved by certain provisions of the Department of Environment, Forests and Wildlife (Scientific Group 'A' Posts) Rules, 1987 (Annex.9) and

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th notification issued in the Employment News on 7.1.1989 (Annex.17) for appointment to the post of Scientist-SD, mentioned at Sl. No.3 of that advertisement.

2. The applicant was appointed as a Senior Technical Assistant (Vety.) on 25.6.1969. Since then, he has been holding that post. A post of Veterinary Officer on higher pay-scale existed in the Department which could be filled up only by deputation of Veterinary Officers from the State Govt., failing which by direct recruitment. Admittedly, this post has remained vacant after 1982, when the officer appointed in June, 1981, left that post.

3. It would appear that the applicant was looking after the ties of that post. He was appointed on an ad hoc basis to the post of Supervisor by the order dated 21.12.1984 of the first respondent (Annex. 10) for six months till the post was filled up, whichever was earlier. However, this ad hoc appointment continued and the last extension was issued by the Annex.XI letter dated 6th March, 1986 by which the tenure of the applicant was extended upto 4.9.1986 or till the post was filled up on a regular basis, whichever was earlier.

4. It is stated that the applicant had to proceed on earned leave for 20 days from 31.5.1986 as his brother was seriously ill at Calcutta. A couple of days before he was to proceed on leave, one female rhinoceros in the Zoo fell ill and died during the period when the applicant was out on leave. He alleges that this has been

taken as a ground to punish the applicant by reverting him by the order dated 1.8.1986 (Annex.XII). The applicant made a representation on 15.9.1986 to the first respondent for being appointed as a Veterinary Officer of the Zoo on ad hoc basis till regular appointment is made. It would appear that this application was forwarded to the first respondents by the letter dated 9.9.1986 of the second respondent (Annex.XV). The second respondent recommended his case for ad hoc appointment, "taking into consideration that the reversion already ordered on my report, is adequate for the neglect of duty". It is, therefore, urged that the reversion was actually by way of misinterpretation.

5. An ultimate representation to the Minister sent on 11.1.1987 (Annex.I) has been rejected by the impugned order dated 1.8.1986 (Annex.I). He was informed that his reinstatement as Veterinary Officer has not been accepted and that in case the same is advertised, he would apply provided he had the requisite qualifications.

6. In so far as the second grievance is concerned, it is pointed out that the designations of all the posts have been changed, as mentioned in Annex.I of the Rules. The post of Veterinary Officer is made a Group 'A' post and designated as Scientist-SD. Earlier, this post was a Group 'B' post. Rule 5.3 provides for recruitment by promotion, transfer on deputation (including short-term contract) transfer or by direct recruitment. It is pointed out that to the extent that provision for promotion has been made, this Rule is

be official to the applicant. However, the particular method of recruitment for each vacancy has to be decided by the Secretary under these Rules. It is stated that this provision vests arbitrary powers in the Secretary without any guidelines.

7. In so far as recruitment to the post of Scientist SD is concerned, Annex.II to the Rules indicates that a person holding Master's Degree in Scientist or equivalent, or a Bachelor's Degree in Engineering, Technology or equivalent, or M.B.B.F. or its equivalent, and has five years' service in the lower grade of Scientist-SC (R.2200-4000) will be eligible for promotion to various C-1 to D posts. The applicant states that he has the necessary qualifications to be considered for the post. However, an advertisement has been issued in the Government Employment News dated 11.11.1968 for filling up one post of Scientific Officer in the Zoological Park via item 3 of that recruitment. In the educational qualifications, it is stated that the applicants should have First class Bachelor's Degree in Veterinary Science or equivalent from a recognised University or institution with five years' experience in handling and treatment of animals and birds in captivity. The applicant contends that the stipulation that applicants should have a First Class Degree, is ultra vires the provisions of Annex.II to the Rules which indicate the norm for recruitment. It is pointed out that as the applicant does not have a First Class degree, he will be denied promotion to this post when, for the first time, this avenue has been opened to him.

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8. In the circumstances, he has filed this O.A. for a direction to quash his order of reversion (Annex.XIII) and the order rejecting his representation (Annex.I) with all consequential benefits and also to declare Rule 5(3) of the Annex.IX Recruitment Rules to be ultra vires and inoperative.

9. The respondents have filed a reply, contesting the claims made in the O.A. It is stated that the applicant was given only an ad hoc appointment as Veterinary Officer. The reversion to his substantive post of Senior Technical Assistant (Now Assistant Veterinary Officer) is not by way of punishment. The applicant cannot feel aggrieved by such reversion to his par... In so far as the grievance regarding the recruitment rules is concerned, it is stated that the new rules have been framed when all posts have been redesigned as posts of Scientists. The respondents contend Rule 5(3) which empowers the Secretary to decide the mode of recruitment, has been found necessary because the department has to consider every time the vacancy arises as to how the posts should be filled up. In this connection it is stated as follows:-

"The provisions of the above rules take into account the interest of public service only. The Department has to think carefully whether a particular post needs to be filled up, at what point of time, and in what manner including such factors as potentialities of Scientific personnel elsewhere in Government. There cannot be any written guideline for the Department or for the Secretary (E&F) regarding the manner in which the provisions of Rules 5.3 and 12.2 shall be operated. Direct Recruitment may be resorted to fill the gap or to supplement

the available in-house expertise, need for officers for a limited period or from other departments to facilitate cross-fertilisation of ideas etc., for deputation."

10. We have heard the learned counsel for the parties. In so far as the reversion of the applicant from the post of Veterinary Officer is concerned, on our direction, the respondents produced the report which the second respondents admits to have sent to the Government in the Annex XV letter dated 9.9.1986. It is clear therefrom that the second respondent had sent a report to Govt. after the death of the rhinoceros fixing blame on the applicant for having neglected his duty and recommending his reversion. We are satisfied that the reversion was, therefore, by way of punishment. Therefore, the order dated 1.8.1986 is not an order of termination of the applicant.

11. In so far as the recruitment rules are concerned, we have carefully considered the reasons assigned by the respondents for giving the Secretary unbridled powers to fix out any guidelines to decide the particular method of recruitment for each vacancy. We have not come across any such provision in any recruitment rules issued by the Govt. of India. There is nothing so special about these posts that the method of recruitment cannot be stipulated in advance or at least a guideline not given. The power conferred on the Secretary is extraordinary and is without any guidelines. It particularly hurts the departmental candidates who have a right to look forward to any avenue of promotion that may be provided by the recruitment rules, "if the Secretary decides, on his whims, that recruitment be made

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by other methods. To sustain the validity of the rules, the minimum guideline needed is that unless in-service candidates of the department eligible for promotion in accordance with the norms of recruitment mentioned in Annex.II to the Rules, are first considered and found to be unfit, the Secretary should not be left with the discretion to consider other methods of promotion. The in-service candidates of the Department, no doubt, cannot claim a right to be promoted but in fairness to them, their claim for promotion should be preference to other methods of recruitment from other departments.

12. The reliance of the respondents on the norms for recruitment to the Scientific posts, (i.e., Annex.II to the ~~norms~~ ^{notes} set out in Annex.V of the notes does not hold ^{water}. The ^{notes} do not specify in the advertisement that the applicant should have a First Class Degree in Library. We notice that in norms for Scientific posts there is no specification that a First Class Degree is necessary. The notes merely authorise that the specific discipline or educational qualification may be decided when a particular post is to be filled up. We further notice that in so far as the Scientific posts in Library and Documentation as well as in Museum are concerned, there is a specific mention in the notes that one of the qualifications, degree or diploma shall be in first class. It is thus clear if it was intended that a First Class Degree was necessary, it would have been specified in the norms themselves. As this has not been done, the requirement specified in this behalf in the impugned advertisement, is ultra vires the Rules.

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13. The learned counsel for the respondents, however, submitted that even if the order of reversion is quashed, the applicant had a right to continue in the post of Veterinary Officer only upto 4.9.1986, the date specified in the last order dated 6.3.1986 (Annex.XI). This will be taken care of in the reliefs granted.

14. For the foregoing reasons, this application is allowed with the following orders and directions:-

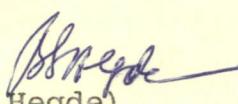
(i) The impugned Annex.XII letter dated 1.8.86 directing the removal of the applicant from the post of Veterinary Officer as the impugned Annex.1 dated 11.4.86, is setting aside the impugned letter in its entirety, as it is unshaded and the applicant should be directed to have continued as a Veterinary Officer under the second respondent upto 4.9.1986 and he shall be granted consequential benefits of pay and allowances within a period of two months from the date of receipt of this order.

(ii) The provisions of Rule 5.3 of the Department of Environment, Forests and Wildlife (Scientific Group 'A' posts) Rules, 1987 in so far as they

vest powers in the Secretary to decide the particular method of recruitment for each vacancy, confer unbridled and arbitrary powers this official without any guidelines and hence, this provision of the said Rule is read 'wn' mean that the Secretary can decide which method of recruitment to adopt only after first considering the claims of the in-serv^c - candidates eligible for - tion and it is found ^{if} that they - not ^{if} fit for - omot^c .

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15. With these orders, the O.A. is disposed of
as above.


(B.S. Hegde)

Member (J)
CAMP, NEW DELHI.


(N.V. Krishnan)

Vice-Chairman