

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 700/89

New Delhi this the 16th day of March, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri S.R. Adige, Member(A).

Shri Manoj Ranjan,  
S/o Shri Ram Hans Lal,  
R/o A-3/258, Janakpuri,  
New Delhi-58.

...Petitioner.

By Advocate Shri T.C. Aggarwal.

Versus

Union of India through  
The Director,  
Directorate of Advertising & Visual  
Publicity (Ministry of Information and  
Broadcasting), 3rd Floor, PTI Building,  
Parliament Street,  
New Delhi.

...Respondent.

By Advocate Shri V.S.R. Krishna.

ORDER (ORAL)

Shri Justice V.S. Malimath.

The petitioner, Shri Manoj Ranjan, was originally appointed temporarily on ad hoc basis as Technical Assistant by order dated 5.4.1980 w.e.f. 22.3.1980. By a further order dated 2.11.1983, he was appointed as Assistant Production Manager on ad hoc basis w.e.f. 26.10.1983. The petitioner's services as Technical Assistant were regularised w.e.f. 6.2.1981. In this Original Application, the petitioner has prayed for a direction to regularise his services in the post of Assistant Production Manager w.e.f. 26.10.1983 and for consequential benefits. When this case was taken up, as none appeared for the respondents obviously having regard to the change in the Central Government Panel of Counsel, we directed Shri Krishna

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to represent the respondents and assist the Tribunal and accordingly he was made available the court records which he studied and made his submissions.

2. The recruitment to the post of Assistant Production Manager (Printed Publicity) is governed by the statutory rules framed by the President under the proviso to Article 309 of the Constitution called 'The Directorate of Advertising and Visual Publicity (Class-II posts) Recruitment Rules, 1971'. Whereas the petitioner has produced one set of rules showing that the post of Assistant Production Manager is required to be filled up  $66\frac{2}{3}\%$  by promotion and  $33\frac{1}{3}\%$  by direct recruitment, the very same recruitment rules annexed to the reply filed by the respondents as Annexure R-1 show that the promotional quota is  $33\frac{1}{3}\%$  and the direct recruitment quota is  $66\frac{2}{3}\%$ . It is difficult in the absence of authenticated copy of the rules being made available by either of the parties to say which version is the accurate one. But one thing is certain that in both set of rules the qualification prescribed for promotion is three years service in the feeder cadre. The petitioner having got his service regularised in the feeder cadre w.e.f. 6.2.1981 became eligible for promotion only on 6.2.1984. Hence, the claim of the petitioner for regularisation with effect from the date of his ad hoc appointment i.e. 26.10.1983 cannot be granted.

3. It was, however, urged by the learned counsel for the petitioner that we should not go by the technical law of pleadings and that we should pass ~~&~~ just equitable order having regard to the circumstances of the case. He submitted that what really has been done by the respondents is not to effect promotions yearly depending upon the vacancies available but to wait till the new rules were framed in the year 1985 and thereafter to take further steps in this behalf. From the stand taken by the respondents, it appears that there was considerable litigation pending in the court which was ~~the~~ reason for making ad hoc arrangement and not regular promotion. The reply affidavit also makes it clear that certain steps were taken to reorganise the department and to bring about comprehensive amendment in the rules. For the sake of convenience, we shall extract para 4.6 of the reply which reads as under:

"The contents of para 4.6 regarding promotion quota are wrong and denied. For better promotional avenues the post of Art and Production Cadre of Directorate of Advertising and Visual Publicity and publications Divisions were merged and a common cadre was formed. Accordingly, the recruitment rules of all the posts of Art and Production cadre were revised, which were approved by UPSC on 1.6.84 and notified on 30.4.1985. These recruitment rules come into force from the date of their notification. In the revised recruitment rules the posts of Assistant Production Manager (Printed Publicity) in Directorate of Advertising and Visual Publicity and Assistant Director

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(Production in Publications Division) were clubbed. The posts of Technical Assistant were available in both the organisations. The promotional quota for the posts of Assistant Production Manager (PP)/Assistant Director(P) for departmental promotion (i.e. Technical Assistant) of the feeder grade was increased from 33 $\frac{1}{3}$ % to 50%."

It is further stated that the decision of Delhi High Court on the writ petition of Shri C.S. Maurya was received by the department on 5.8.1985. By that time, the new rules had come into force and thereafter steps were taken only in accordance with the new rules.

4. Without limiting our attention to the technical law of pleadings, if we examine the case broadly, as contended by the learned counsel for the petitioner, it would follow that instead of going through the process of filling up the vacancies in the year 1984, they waited until the merger of the <sup>two</sup> cadres took place and the new rules were brought into force on 30.4.1985 and the decision of the Delhi High Court was also received on 5.8.1985. Though normally one would expect the vacancies to be filled up in a reasonable manner as and when the vacancies arise in a particular year in accordance with the rules that are in force at the relevant point of time, the question for consideration is as to whether the attitude taken by the respondents in this case can be regarded as arbitrary and calling for interference. The case of the petitioner at best would mean that the petitioner became eligible for consi-

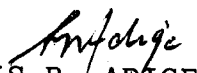
deration for promotion on 6.2.1984. Hence, the petitioner cannot make complaint about the non-promotion or promotion <sup>without</sup> /considering his case in regard to the vacancies that occurred before he became eligible. So far as the vacancies that occurred after he became eligible on 6.2.1984 are concerned, it was submitted that the steps were taken to merge the Art and Production Cadre of Directorate of Advertising and Visual Publicity and Publications Divisions and proposals for amending the rules were sent to the UPSC. The UPSC accorded its approval and the rules were brought into force on 30.4.1985. If the petitioner became eligible only on 6.2.1984 and by that time the UPSC had already approved the proposed amendment of the rules on 1.6.1984, we fail to see how the action of the respondents can be characterised as arbitrary in not filling up the vacancies in accordance with the rules and for having waited until the new rules came into force. We should not forget that the litigation was pending in the court and that stood terminated only on 5.8.1985. In this background, it is not possible to take the view that the conduct of the respondents in not effecting further promotions can be regarded as arbitrary justifying interference. As regards the situation after the new rules came into force, there has been considerable change inasmuch as the similar posts of Assistant Production Manager of two sections were merged. There are Technical Assistants in both the divisions and all of them became eligible for consideration according to the newly constituted common cadre. Hence, the petitioner cannot just

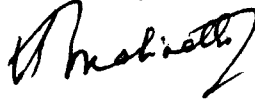
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rely upon his position that he enjoyed before the merger took place and the new rules came into force. We have, therefore, no hesitation in holding that no case for interference has been made out. It is not the case of the petitioner that in accordance with the amended rules the action of the respondents has been in transgression of the said rules. It is unnecessary to examine this aspect of the matter.

5. For the reasons stated above, this petition fails and is accordingly dismissed. No costs.

  
(S.R. ADIGE)  
MEMBER(A)

  
(V.S. MALIMATH)  
CHAIRMAN

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