

(D)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No.2077 of 1988

New Delhi, this the 07th day of January, 1994.

HON'BLE I.R. J.P.SHARMA, MEMBER(J)  
HON'BLE MR. BUK. SINGH, MEMBER(A).

Sukh Dayal,  
son of Late Shri Paramanand,  
Upper Division Clerk, Monopolies & Restricted Trade  
Practices Commission,  
Travancore House,  
Kasturba Gandhi Marg,  
New Delhi.  
(By Advocate: Shri S.S.Tiwari)

...Applicant

VERSUS

1. Union of India,  
through the Secretary,  
Ministry of Industry,  
Udyog Bhavan,  
New Delhi.
2. The Secretary,  
Department of Company Affairs,  
Shastri Bhavan,  
New Delhi.
3. The Secretary,  
M.R.T.P.Commission,  
Travancore House,  
Kasturba Gandhi Marg,  
New Delhi.
4. The Department of Personnel  
and Administrative Reforms,  
North Block,  
New Delhi.

(By Advocate: Shri N.S.Mehta)

...Respondents

O R D E R (ORAL)

HON'BLE MR. J.P.SHARMA, MEMBER(J):

The grievance of the applicant is that he joined M.R.T.P. Commission as L.D.C. in October, 1971 and subsequently got promotion as Upper Division Clerk (U.D.C.) in October, 1980 on regular basis.

The next promotion is to the post of Assistant. The Recruitment Rules filed during the course of the arguments go to show that 50% posts of Assistants are filled by promotion and the remaining 50% by

transfer failing which by transfer on deputation. Regarding promotion, the eligibility is that UDC in MRTPC with 5 years regular service in the grade after appointment thereto on regular basis. The grievance of the applicant is that the chances of promotion to Assistant have been narrowed down by this particular provision in the recruitment rules in view of the fact that the strength of the cadre is limited and 50% of Assistants are drawn from outside the cadre <sup>are</sup> of UDC who <sub>1</sub> subsequently absorbed.

2. The respondents contested this application and in their reply opposed the grant of relief to the applicant. It is stated that the recruitment rules are statutory in nature and it is the sole prerogative of the administration to formulate the rules of recruitment according to the guidelines of the model Ministry with concurrence of U.P.S.C. In the present case, 50% of the posts of Assistants are filled by promotion and remaining 50% of posts are filled on transfer failing which by transfer on deputation. Out of 5 posts, 3 posts were earmarked for promotion and 2 for transfer/deputation.

3. Having heard the learned counsel for a considerable time, the learned counsel for the applicant prayed that at least some suggestion be made while disposing of the application so that the respondents may consider the amendment of the rules in order to enhance the chances of promotion of the staff already working in M.R.T.P.C. In this connection, learned counsel has pointed out to a

letter written by the Section Officer on behalf of the MRTPC dated 24-11-87 that the existing recruitment rules are going to be revised/ notified shortly by the department of Company Affairs. He has further informed that on receipt of a copy of the revised recruitment rules, if it is found that no amendment has been made in the revised recruitment rules in respect of the filling up the posts of Assistants and UDCs, the matter will be taken up with the Ministry of Company Affairs again to amend the same. This memo though of 1987, it appears that the revised recruitment rules have not come into being. In the meantime, the applicant has also made certain representations to the Secretary, MRTPC that the representation be again forwarded to Department of Company Affairs for amendment of recruitment rules so that before the applicant could superannuate in service, he may get the benefit of next higher promotion.

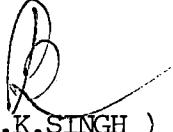
4. It is an undisputed fact that a person who joins the service must have adequate chances of next higher promotion. In this connection, the learned counsel for the applicant has referred to para 3.12.3 quoted from the Hand Book on recruitment rules issued by Ministry of Home Affairs, Department of Personnel and Administrative Reforms, Establishment Division -1984 edition at page 18 that transfer may be kept as a matter of recruitment when it is possible to get the services of suitable officers having the requisite qualifications and experience within the Central Government departments and State Governments. Short term contract is also a form of deputation and this applies to officers from non-government bodies, e.g., universities. It is further observed that the

incumbents of the lower posts if directly recruited not having any avenue of promotion, so it shall be desirable to keep a method of recruitment of transfer on deputation on short term contract. It is further observed that care should always be taken to ensure that the officers holding posts other than in an organised service, have another aspect of advancement in their own line. Though it is in connection with the isolated posts, but at the same time, since in the present cadre of Assistants, the cadre is of only 5 persons at the relevant time, the spirit of this shall be equally applicable in such cases. The learned counsel for the applicant has also referred to the case of Dr. (Mrs.) O.Z.Hussain Vs. Union of India reported in 1990(Suppl.) SCC p.688, when the Hon'ble Supreme Court considered the matter regarding avenue of promotion for non-medical group of Scientists in the Establishment of Director-General of Health Services under Ministry of Health and Family Welfare. The Hon'ble Supreme Court directed that on the model recruitment rules framed by the Ministry of Science and Technology that such guidelines may be necessary. Appropriate rules should be framed to give certain avenues of promotion.

5. Having gone through the law cited before us and hearing the learned counsel for the parties, we are of the opinion that the Tribunal cannot pass any specific direction for amendment of the recruitment rules. It is primarily a policy matter and solely falls within the domain of administration. It is another thing that the Tribunal may struck down a rule if it is arbitrary and ultra vires of

provisions of Article 14 and 16 of the Constitution. That is not the case here. At the same time, we do feel that the avenues of promotion should be adequately made in the recruitment rules for those who have initially joined in the department and want to serve the same department efficiently and with diligence.

6. In view of the above facts and circumstances, the present application is disposed of making an observation that the respondents may consider the case of amending the recruitment rules according to law. Costs be borne by the parties.

  
( B.K.SINGH )  
MEMBER(A)

  
( J.P.SHARMA )  
MEMBER(J)

'Kalra'  
07011994.