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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.224/88

Date of decision: 01.06.1993.

Shri G.R. Singh

...Petitioner

Versus

Union of India & Ors.

...Respondents

Coram:- The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. J.P. Sharma, Member (J)

For the petitioner

Shri S.S. Rana, Counsel.

For the respondents

Shri P.P. Khurana, Counsel.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

The case of the petitioner is that 7 posts, viz. Director (Research) one, Joint Director (Economics) one, Deputy Director (Economics) two and Assistant Director (Economics) three operated in Monopolies & Restrictive Trade Practices Commission (MRTPC for short) were encadred in the Indian Economic Service (IES) vide Ministry of Finance, Department of Economic Affairs notification dated 19.9.1985. The petitioner was working as Assistant Director and was confirmed against that post w.e.f. 27.11.1981. He was given promotion as Deputy Director on adhoc basis on 9.8.1985 and was reverted in November, 1985. He has challenged the D.O. letter written by the Additional Secretary, Department of Economic Affairs to the Chairman M.R.T.P.C. on 22.4.1987. According to this letter it was decided to decadre such post as had incumbents either working against the posts or holding lien against them on the date of their encadrement, i.e., 19.9.1985. Aggrieved by the decadrement of these posts the petitioner has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying that the respondents be directed to include the pplicant in I.E.S. in view of the encadrement of his post by notification dated

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19.9.1985 with a further direction to give him appropriate seniority, promotion and other consequential benefits in the IES on the basis of which earlier promotion to higher grades is granted to officers who had held encadred post on adhoc basis. Finally he prays that the respondents be restrained from decadring the posts held by the applicant and others.

2. The learned counsel for the petitioner Shri S.S. Rana submitted that the proposal for decadring the posts is sent by the MRTPC whereas the controlling authority of the petitioner is the Department of Company Affairs. As such the decadrement proposal cannot be legally sustained.

3. The stand of the respondents is that the recruitment in the IES is 50% by direct recruitment and 50% by promotion from the feeder categories. For the purpose of promotion Rule 7-A of the recruitment rules of IES Rules, 1961 takes the precedence. The officers from the feeder categories can be inducted into IES after they have been screened by a duly constituted committee in accordance with that Rule. The encadrement of the post in a participating department does not automatically place the incumbent of the post in the IES. When the posts in MRTPC were encadred the judgment in Narender Chadha's case was not available. But, as soon as the said judgement of the Hon'ble Supreme Court became available the respondents had to consider the matter afresh in its totality. It was, therefore, considered proper that wherever the incumbents against the posts are holding lien such posts should be decadred to facilitate the maintenance of effective and efficient service in overall public interest. The

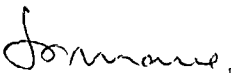
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respondents further submit that it is the cadre controlling authority which has the right to determine the authorised strength of the cadre after taking into account all relevant factors. Decadrement of the posts in the M R.T.P.C. has allowed the incumbents to continue against those posts and retain their lien wherever they have confirmed. If the posts had remained encadred it may not have been possible to continue the incumbents working against those posts, a the right for appointment against these posts would vest in the officers of the IES. The petitioner would then have to be recruited in accordance with the rules subject to his being found fit by the selection committee in accordance with Rule 7-A of the IES Rules, 1961. It is further submitted that MRTPC is a participating department and the decision to decadre the posts was taken after consultation with the Department of Personnel by the cadre controlling authority. The only post which remains encadred is that of Director. Other posts of Joint Director, Deputy Director, Assistant Director against which incumbents are working or are holding lien have been decadred in their own interest.

4. The learned counsel for the respondents Shri P.P. Khurana referred us to the MRTPC letter dated 11.12.1987 addressed to the Department of Economic Affairs, Ministry of Finance, advising the decision of the MRTPC to decadre six posts viz. Joint Director (E) one, Deputy Director two and Assistant Director three leaving only one post of the Director (Research) in the cadre of the IES. The decision to decadre the six posts has been taken after a careful consideration both by the cadre controlling authority and the participating

department. Encadrement and decadrement of the post is a policy matter which has to be decided by the executive taking into account all relevant factors. The Tribunal cannot substitute itself in the place of cadre controlling authority or the participating department. It is also observed that the petitioner has been promoted as Deputy Director in MRTPC in August, 1989. His grievance is that by encadring the post of Director and decadrement of the other six posts he may not be able to reach the post of Director. The petitioner is only a Deputy Director. He has to be promoted as Joint Director and he has to be inducted in the IES before he can aspire for the post of Director in the department or elsewhere. We, therefore, do not see any cause for grievance. It is the decadrement of the posts upto and including Joint Director level which has enabled his confirmation. This, therefore, has not affected him adversely. His induction into the IES is a different matter, which has to be done according to the rules. Encadrement of the post of Director keeps that avenue also open.

5. In the above facts and circumstances of the case we do not find any merit in the O.A. The same is dismissed. No costs.


(J.P. Sharma)
Member (J)


(I.K. Rasgotra)
Member (A)

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