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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 471 1988  
T.A. No.

DATE OF DECISION 13.7.1988

Shri G.B.Jakhetia Petitioner

Shri G. D. Gupta, Advocate for the Petitioner(s)

Versus

Union of India & others Respondent s

Shri P.P.Khurana, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to all the Benches ? No

*Kaushal Kumar*  
( KAUSHAL KUMAR )  
MEMBER

*K. Madhava Reddy*  
( K. MADHAVA REDDY )  
CHAIRMAN

13.7.88

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI.

REGN.NO. CA 471/88

Date of decision: 13.7.1988

Shri G.B.Jakhetia

----- Applicant

Vs.

Union of India & others

----- Respondents

CORAM: Hon'ble Mr. Justice K. Madhava Redddy, Chairman.  
Hon'ble Mr. Kaushal Kumar, Member.

For the Applicant

..... Shri G.D. Gupta, Counsel.

For the Respondents

..... Shri P.P. Khurana, Counsel.

(Judgement of the Bench delivered by Hon'ble  
Mr. Justice K. Madhava Reddy, Chairman)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to restrain the Respondents from filling up the post of Industrial Adviser (Modernisation) by direct recruitment.

2. The few facts necessary to appreciate the contentions raised in this case may be briefly noticed: The applicant is at present employed as Director in the scale of Rs. 3700-5000/(Class-I/Group-A, Gazetted) in the office of the Development Commissioner, Small Scale Industries under the Government of India, Ministry of Industry, New Delhi. The applicant claims to be entitled to be considered for promotion to the post of Industrial Adviser (Modernisation) in accordance with the Small Scale Industries Organisation (Class I and Class II (Gazetted) Posts) Recruitment Rules, 1962 (hereinafter referred to as the 'Rules'). Under the said Rules, the post of Industrial Adviser (Modernisation) which is a post under the General Central

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Service Class I Gazetted has to be filled in the manner stated in the Schedule attached to the said Rules, columns 10 & 11 thereof which are relevant for our present purposes, read as under:-

" Method of recruitment whether by direct recruitment or by deputation/transfer & percentage of the vacancies to be filled by various methods.

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In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made.

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By promotion failing which by transfer on deputation and failing both by direct recruitment.

Promotion:  
Directors(Grade I in Mechanical/Metallurgical Divisions with 5 years service in the grade.

Transfer on deputation:

Officers under the Central/State Governments holding analogous posts or with atleast 5 years service in posts in the scale of Rs.1500-2000 or equivalent and possessing the qualifications prescribed for direct recruits under Col.7.

(Period of deputation-ordinarily not exceeding 5 years)"

3. While the applicant is fully qualified for being considered for promotion, the Respondents have chosen to fill up this post by way of direct recruitment and have published an advertisement on 11.7.1987 calling for applications. The principal contention of the applicant is that the methods of recruitment by way of promotion and by way of transfer on deputation not having been followed and not having failed, steps to fill in the post of the Industrial Adviser(Modernisation) by way of direct recruitment cannot be resorted to.

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4. The applicant was appointed as Mechanical Engineer and Senior Technical Expert(Engineering) in the Directorate of Industries, Government of Madhya Pradesh from 15.11.1955 to 31.3.1961. After being selected by the Union Public Service Commission he was appointed from March 1961 as Deputy Director (Mechanical) in the office of the Development Commissioner, Small Scale Industries where he has worked from March 1961. He was sent on deputation to the United Nations Industrial Development Organisation and remained there from February 1970 to February, 1971. After a gap of one month, he was sent to Vienna where he remained upto 23.3.1974. On 22nd May, 1974, he was promoted as Director Grade-II on ad-hoc basis in the then scale of Rs.1300-1700. On the recommendation of the Departmental Promotion Committee, his services were regularised on 25.1.1977. He was further promoted as Director Grade-I on ad hoc basis in the scale of Rs.1500-2000 on 25.4.1979. The Departmental Promotion Committee presided over by a Member of the Union Public Service Commission regularised his services with effect from 28.10.1981. As per the recommendations of the Fourth Pay Commission the posts of Director Grade-II and Director Grade-I were merged into that of Director in the scale of Rs.3700-5000/- with effect from 1.1.86. The next higher post to which the applicant could be considered for appointment by way of promotion is the post of Industrial Adviser(Modernisation). This post fell vacant in 1984 on account of the pre-mature retirement of the then incumbent. It is a Selection Post. It is common ground that this post has to be

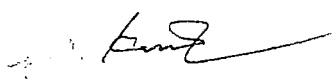
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filled in by promotion. Only if the method of promotion fails, the post may be filled in by way of transfer on deputation and "failing both these methods," the method of direct recruitment may be resorted to. The Respondents justifying their action in resorting to direct recruitment state that the method of recruitment by way of promotion as well as by transfer on deputation had failed. The Respondents<sup>further</sup> state that the Departmental Promotion Committee met on 2.3.1985 and found that the applicant was not eligible to be considered for promotion inasmuch as his services were regularised only on 28.10.1981 and as such/<sup>he</sup> had not put in 5 years of regular service in the Grade. Although he was appointed to the said Grade on 25.4.1979 but that was only on/<sup>an</sup> ad hoc basis. As such the period of service from 1979 to 1981 cannot be taken into account for determining his eligibility. The Departmental Promotion Committee which met on 2.3.1985, recommended the appointment of Shri R.Lakhminarasimhaiah. The offer of appointment shows that Shri R.Lakhminarasimaiah was senior to the applicant but he declined to accept the said post. The second Departmental Promotion Committee which met on 17.12.1985 recommended the name of Shri G.S.Kashyap and the proposal was sent to the Appointments Committee of the Cabinet. But the Appointments Committee of the Cabinet declined to approve his appointment and directed the Ministry to try alternative methods namely transfer on deputation

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failing which direct recruitment. It is stated that at that time no other eligible officer was available in the feeder cadres to be considered for promotion. Thus the first method to fill this post by way of promotion had failed. Therefore, the vacancy was circulated inviting applications from the eligible candidates for appointment to this post by way of transfer on deputation. However, the response was not adequate. Even when it was circulated for the second time, there was no adequate response. Under these circumstances, the Union Public Service Commission was consulted and the Commission agreed to the post being filled in by way of direct recruitment. Therefore, the Union Public Service Commission was moved for initiating action for direct recruitment.

5. From the above narration of facts which are not in dispute, it is clear that on the date when the action for direct recruitment was initiated i.e. on 7.5.87, the applicant had completed 5 years of service as Director Grade-I and, therefore, he was eligible to be considered for promotion. However, what is contended by the Respondents is that on the date when action was initiated to fill in the post by way of promotion that is, when the first Departmental Promotion Committee met on 2.3.1985 and when it met again on 17.12.1985, the applicant was not eligible to be considered for promotion as he had not completed 5 years



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of regular service. According to them the service rendered by the applicant from 25.4.1979 to 28.10.1981 which was on ad hoc basis cannot be counted. Admittedly if that service is not taken into account, the applicant had not put in 5 years' service. However, by the date the first Departmental Promotion Committee met, the applicant who had been appointed to the post of Director Grade-I on ad hoc basis on 25.4.1979 and had continued in that Grade without any break had in fact put in 5 years service in that grade though not 5 years regular service for he was regularised on 28.10.1981. The Rule prescribing the qualification for this post to be filled in by promotion merely requires 5 years of service in the Grade and not 5 years' regular service. In the absence of the words 'regular service' which are prescribed by some Rules of Recruitment, we have no reason to restrict the ambit of the expression "5 years service" to regular service. The intendment of this Rule is that the persons with 5 years' experience in Grade I should be considered for further promotion. Obviously, the Rule Making Authority took note of the fact that while such posts are filled in on ad hoc basis, for one reason or the other such ad hoc appointees continue on these posts for years on end without being considered for regularisation. Whether an officer works in Grade-I on ad hoc basis or on regular appointment, he begins to gain experience in respect of the duties and responsibilities attached to that post. When the Rule does not lay down that the service to be reckoned should be regular service, the experience gained in service for 5 years in that

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particular grade should be good enough. In our opinion, it will be against the intention of the Legislature to insist upon such service being regular service. The ad hoc service which the applicant has rendered and which the competent authority regularised later on, cannot be ignored for the purposes of determining his eligibility to be considered for the post under the said Rules.

6. In S.Ramaswamy V. Union of India & others(1) where the eligibility Rule that applied for promotion to a particular post with which their Lordships of the Supreme Court were concerned in that case required that a person should have "5 years of regular service" held that ad hoc service cannot be counted. The present case is a converse case in which the relevant Rule merely requires 5 years service and <sup>not</sup> regular service. Hence even ad hoc service should be counted for the purpose of determining the eligibility of the officer for promotion. We accordingly hold that the applicant who had completed 5 years of service in Grade I (taking into account ad hoc service as well) even by the date of the first meeting of the Departmental Promotion Committee held on 2.3.1985 ~~xx~~ was eligible to be considered for promotion on that date and also on 17.12.1985 when the second Departmental Promotion Committee met. After Shri R.Lakhminarasimhaiah was selected and he had not joined, on 17.12.1985 the applicant should have been considered and offered

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(1) AIR 1976 SC 2394

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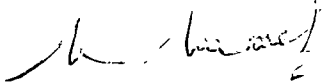
the post. The Respondents and the Departmental Promotion Committee were in error in assuming that there was no eligible officer available for being considered for promotion. The name of the applicant was ignored upon an erroneous interpretation of the Rule. In fact, the applicant should have been considered along with Shri R. Lakhminarasimhaih when the Departmental Promotion Committee met for the first time on 2.3.1985 as also on 17.12.1985. Without considering the applicant the Respondents could not validly say that the method of appointment by way of promotion had failed so as to enable them to resort to the alternative method of filling up the post by way of transfer on deputation or by way of direct recruitment.

7. In this view of the matter, the action of the Respondents in addressing the Union Public Service Commission to initiate steps to fill up the post by way of direct recruitment is held to be illegal and cannot be sustained. The advertisement issued pursuant to the said letter and also all other steps taken in this behalf are quashed. The Respondents are further directed to consider the claim of the applicant for promotion as on 2.3.1985 when the first Departmental Promotion Committee met. In case his name is recommended for appointment and is approved by the competent authority, he shall be appointed to the post carrying the higher scale of pay. He will be entitled to all consequential benefits with effect from the date of his appointment. This order shall be

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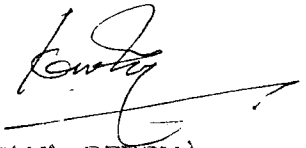
implemented within a period of three months of the receipt of the same.

8. This application is allowed as indicated above but in the circumstances with no order as to costs.



( KAUSHAL KUMAR )  
MEMBER

13.7.1988



( K. MADHAVA REDDY )  
CHAIRMAN