

(13) CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 491/88
T.A. No.

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DATE OF DECISION 4.4.1991.

Shri C.P. Nanda	Petitioner Applicant
In person	Advocate for the Petitioner(s)
Versus	
Delhi Administration & Others	Respondents
Shri M.M. Sudan	Advocate for Respondents 1 & 2
Shri B.B. Sharma	Advocate for the Respondent(s) 4

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. P.C. Jain, Administrative 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 it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as Public Prosecutor in the Office of the District & Sessions Judge, Tiz Hazari Courts, Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (i) To set aside the entire proceedings held for selection of an officer for appointment to the post of Public Prosecutor in the Directorate of Education;
- (ii) to set aside the impugned order of recommendation dated 22.3.1988 by which the U.P.S.C. recommended

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the name of respondent No.4 (Shri S.C.Saxena) for appointment to the post of Public Prosecutor and declare that the recommendation is arbitrary and not based on the perusal of particulars of service experience along with character rolls, biodata, etc., and it is also contrary to the rules;

- (iii) to set aside the recruitment rules for appointment to the post of Public Prosecutor; and
- (iv) to regularise him as Public Prosecutor so long as he continues to be the senior-most regular Chief Prosecutor.

2. It may be stated at the outset that the applicant retired from Government service on attaining the age of superannuation on 31.11.1988. During the arguments, the learned Counsel for the respondents stated that Shri Saxena is due to retire on 30.4.1991.

3. The applicant began his career as P.S.I. in Delhi Police in 1956-57. In 1965, he was promoted as Prosecuting Inspector, as Senior Prosecutor in 1970, and as Chief Prosecutor in 1973. He has worked on ad hoc basis in the post of Public Prosecutor from 27.5.1985 to 30.6.1988 by

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grant of extensions from time to time. The last extension given to him was on 14.3.1988, according to which his period of ad hoc appointment was extended upto 30.6.1988 or till regular arrangement was made, whichever was earlier. He was, in fact, reverted w.e.f. 20.4.1988, the date on which the interim order given against his reversion was vacated by the Tribunal.

4. The recruitment rules for the post of Public Prosecutor which were notified in 1987, provided, inter alia, that the method of recruitment is "by transfer on deputation" and that consultation with the U.P.S.C. is necessary while selecting an officer for appointment on deputation. No doubt, the applicant was eligible to be considered for appointment by transfer on deputation as he fulfilled the requisite qualifications prescribed under the recruitment rules.

5. The Delhi Administration wrote to all the Heads of Departments on 3.4.1987 regarding their proposal to fill up the post of Public Prosecutor by transfer on deputation and requested that the vacancy be circulated amongst the officers so that those who fulfilled the requirements, could apply for the post of Public Prosecutor. In response to the said circular, 10 officials responded

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and applied for the post, including the applicant. The U.P.S.C. held a personal talk on 18.3.1988 with the candidates and thereafter, recommended Shri Saxena (Respondent No.4) for appointment to the post of Public Prosecutor. The applicant is aggrieved by his non-selection.

6. The contention of the applicant in a nutshell is that being the seniormost regular Chief Prosecutor, he should have been appointed to the post of Public Prosecutor on the criterion of seniority and that he has a vested right to be appointed as such. The applicant has also contended that the post of Public Prosecutor is to be filled by transfer on seniority basis.

7. As against the above, the respondents have contended in their counter-affidavit that according to the relevant recruitment rules, the post is to be filled by transfer on deputation and that the appointment of Shri Saxena pursuant to the recommendations made by the U.P.S.C., is legal and valid. They have also argued that having participated in the selection process, the applicant is estopped from challenging the validity of the very same selection.

8. We have carefully gone through the pleadings of both the parties and have considered the rival contentions.

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The recruitment rules of 1987 stipulate that the post of Public Prosecutor is to be filled up by transfer on deputation and in consultation with the U.P.S.C. The respondents have given due publicity about the vacancy by notifying the same to the Heads of departments of the Delhi Administration. Ten candidates were in the field of selection. The U.P.S.C. also conducted a personal talk of the eligible candidates, including the applicant. In these facts and circumstances, the selection made by the U.P.S.C. which is in accordance with the recruitment rules, cannot be faulted on any legal or constitutional grounds. It is clear that seniority alone is not the criterion for selection. The applicant has only a right to be considered for the post.

9. Another aspect of the matter is that an applicant, after having appeared at an interview held by the U.P.S.C. and failed to get selected, cannot challenge the validity of the very selection made by the U.P.S.C. (vide Brij Kishore Dubey & Others Vs. Union of India & Another, ATR 1989 (2) CAT 577 at 592).

10. With regard to the prayer of the applicant for setting aside the recruitment rules for appointment to the post of Public Prosecutor, he has not given any grounds except that it is contrary to the provisions

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of the Criminal Procedure Code. The provisions of Section 24 of the Code of Criminal Procedure ^{which} ~~was~~ deals with the appointment of Public Prosecutors, envisage, inter alia, that where in a State there exists a regular cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons consisting such cadre (vide Section 24 (6) of the Code of Criminal Procedure, 1973). In the instant case, the appointment of the Public Prosecutor was from the regular cadre of the Prosecuting Officers of the Delhi Administration. As there is only one post of Public Prosecutor, filling it by the mode of transfer on deputation cannot be said to be unreasonable or unconstitutional, as in this manner, the best person could be selected for appointment. We, therefore, see no merit in the prayer made by the applicant for quashing of the recruitment rules in question.

11. In the light of the foregoing, we see no merit in the present application and the same is dismissed, leaving the parties to bear their own costs.

4/4/1991
(P.C. Jain)
Administrative Member

4/4/91
(P.K. Kartha)
Vice-Chairman (Judl.)