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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.503/88

Date of decision: 17.08.1993.

SMT. SNEH LATA

...PETITIONER

VERSUS

LT. GOVERNOR, DELHI & OTHERS

...RESPONDENTS

CORAM: -

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)
THE HON'BLE MR. B.S. HEGDE, MEMBER (J)

FOR THE PETITIONER IN PERSON

FOR THE RESPONDENTS MRS. AVNISH AHLAWAT, COUNSEL
FOR RESPONDENTS NO.1-3.

SHRI K.L. BHATIA, COUNSEL FOR
RESPONDENT NO.4.

JUDGEMENT(ORAL)
(HON'BLE MR. I.K. RASGOTRA)

We have heard the petitioner in person and Mrs. Avnish Ahlawat, learned counsel for respondents No.1-3 and Shri K.L. Bhatia, learned counsel for respondent No.4. The case of the petitioner is that she was appointed as Hindi Officer in the Delhi Administration on 22.8.1978 in the pay scale of Rs.650-960. The next higher post in the promotional channel for Hindi Officer at that time was the post of Assistant Director in the pay scale of Rs.700-1300. Dr. N.D. Paliwal was holding the post of Assistant Director in the department from 31.1.1970. Since Dr. Paliwal was stagnating in the grade of Assistant Director he made representations to the respondents which culminated in the post of Assistant Director being temporarily upgraded to that of Deputy Director in the pay scale of Rs.1100-1600. According to the orders of the Education Department, Delhi Administration dated 20.5.1981 with the creation of the temporary post of Deputy Director, the post of Assistant

Director (Hindi) created vide sanction order dated 29.12.1969 and made permanent vide order dated 20.2.1976 was kept in abeyance with effect from the date the post of Deputy Director (Language) is filled up. Dr. N.D. Paliwal who was holding the post of Deputy Director (Language) retired from service on superannuation on 30.11.1987. The post has remained vacant thereafter. The recruitment rules for the post of Assistant Director (Hindi) provide that the said post has to be filled up by selection by promotion, failing which by transfer on deputation, failing both by direct recruitment. Hindi Officers having five years' service in the grade rendered after appointment thereto on regular basis are eligible for promotion to the post of Assistant Director. As the petitioner was holding the post of Hindi Officer, she made a number of representations to the respondents, the last one being of 8.3.1988, requesting the revival of the post of Assistant Director which had been kept in abeyance on the appointment of Dr. Paliwal as Deputy Director. In the meanwhile, the respondents created one temporary post of Senior Hindi Officer vide sanction order dated 8.12.1981 to which respondent No.4, Ms. Meena Dubey was appointed. Respondents also notified the recruitment rules ^{for} the post of Deputy Director (Language) vide notification dated 23.2.1983. According to the said recruitment rules, the said post is to be filled up by promotion/transfer or deputation failing which by direct recruitment. Note below column 12 of the schedule annexed to the notification promulgating the recruitment rules for the post of Deputy Director provides "suitability of the regular holder of the post of

Assistant Director (Hindi) in the scale of Rs.1100-1600. If assessed suitable he shall be deemed to have been appointed to the post under those rules." The zone of eligibility for promotion/transfer on deputation includes:

"(i) Officers under the Central/State Govts. and Union Territories.

"(a)(i) holding analogous posts; or with five years service in posts in the scale of Rs.700-1300 or equivalent; or with 8 years' service in posts in the scale of Rs.650-1200 or equivalent."

2. There was thus only one post of Assistant Director in the cadre and one post of Deputy Director. Only an Assistant Director in the grade of Rs.700-1300 with five years' service would aspire for level of Deputy Director or an officer with 8 years' service in the grade of Rs.650-1200 would claim consideration. After the post of Deputy Director fell vacant the respondents neither revived the post of Assistant Director nor was it abolished nor did they fill up the post of Deputy Director by obtaining the services of anyone by transfer on deputation or by direct recruitment in accordance with the provisions made in the recruitment rules. In absence of any reply from the respondents to the various representations the petitioner has filed this Application under Section 19 of the Administrative Tribunals Act, 1985 on 24.3.1988. By way relief she has prayed that the petitioner be promoted as Assistant Director (Language/Hindi) after reviving the post of Assistant Director on the retirement of Dr. Paliwal.

2

3. When the case came up on 18.4.1988 the Tribunal observed that:-

"No case for interim relief is made out. However, any regular or ad-hoc promotion made to the post of Deputy Director with the pay scale attached to the post will be subject to the outcome of this application and the promotee should be informed accordingly."

4. The facts of the case, as adverted to earlier are not disputed by the respondents. The respondent No.4 in the reply filed has questioned the right of the petitioner to file this Application after a long lapse of time. The respondent No.4 has also contended that the petitioner has no legal right to pursue her case for seeking enforcement through the Tribunal.

5. When the petitioner was heard on 16.8.1993, the learned counsel for the respondents No.1-3 was asked by the Bench to find out the latest position as ordinarily after the post of Deputy Director fell vacant the post of Assistant Director which was held in abeyance should have been revived. Mrs. Avnish Ahlawat, learned counsel for the respondents sought time for the purpose, which was allowed and the case was listed as part-heard for hearing today. The learned counsel for respondents No.1-3 Mrs. Avnish Ahlawat today produced before us a letter of respondents No.F.8/6/81-Edn./SAD dated 16.8.1993 which is addressed to her by the Under Secretary (Admn.) and reads as under:

"I am to refer to telephonic conversation of date and to inform you that U.P.S.C. has been approached

2

for amendment in the Recruitment Rules for the post of Assistant Director (Hindi) in Language Department, Delhi Administration, Delhi in the pay scale of Rs.2200-75-2800-EB-100-4000 and their reply is still awaited.

It is further added that the post of Assistant Director (Hindi) is being revived and thereafter the post of Deputy Director (Language) will stand abolished."

6. Learned counsel for respondents 1-3 also brought to our notice the position as appearing in the office note of the respondents wherein it is stated that while no assurance was given to the petitioner that she would be considered for the post of Assistant Director (Hindi), the post of Assistant Director (Language) is being revived and it is proposed to consider her for appointment in the said post subject to her eligibility as per the provisions of the recruitment rules and further subject to the condition that she will not claim any right in any post in DANICS. As far as respondent No.4 is concerned, there is no order or any other material which is on record to indicate that she has been appointed to the post of Deputy Director. In that view of the matter, the petitioner should have no grievance against respondent No.4. As adverted to above, the respondents have now taken the correct decision inasmuch as that they are reviving the post of Assistant Director with immediate effect. This should have been done by them right in 1987 when the then Deputy Director retired on superannuation. A post which is held in abeyance cannot be deemed to have been abolished unless a specific order to that effect is passed by the competent

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authority. The word 'abeyance' means "a state of suspension, dormant condition; a position of being without an owner." Aiyar's Judicial Dictionary 10th Edition 1988 explains the distinction between a post being kept in abeyance and a vacancy simpliciter by stating that in the case of latter, it is available to be filled up at anytime, while in the case of the former, the post has to be brought into life from the stage of dormancy and then a vacancy created to be filled up. Otherwise put, when the post is kept in abeyance there is no vacancy because there is no post to be filled up. The word abeyance connotes temporary withholding or suspension or keeping in dormancy condition. It implies that once the reason for dormancy is no longer there, it has to be revived by giving life to it. The respondents should, therefore, have revived the post w.e.f. 1.12.1987 and taken action to fill up the post by holding selection from amongst the eligible candidates in accordance with the recruitment rules which were prevalent at that time.

7. Be that as it may, now that the respondents have decided that the post is being revived and action being taken to fill up the same from among the eligible candidates in accordance with the recruitment rules and that the petitioner will be considered for the said post, the cause of action for the petitioner no longer survives. Since the petitioner has been in the direct line of promotion for the post of Assistant Director (Language) we direct the respondents to consider her case immediately for promotion on ad hoc basis subject to her otherwise being eligible and suitable. In case the regular promotion is likely to take time in view of the

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fact that she is left with only about a service of one year more. In case the petitioner is found fit for regular promotion to the said post, she shall be further entitled to notional fixation in the relevant scale of pay from the date the vacancy arose from 1.12.1987 without any financial benefit till the date she is promoted to the post of Assistant Director. This would mean that the petitioner shall be deemed to have been promoted to the post of Assistant Director notionally from the date the vacancy arose thereby giving her the benefit of grant of increments without any payment of arrears till the date she is promoted as Assistant Director and her pay fixed accordingly.

8. The O.A. is disposed of, as above. No costs.

B.S. Hegde
(B.S. HEGDE)
MEMBER(J)

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

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