

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

11

O.A. No. 13 of 1986
~~T.A. No.~~

DATE OF DECISION 9-4-1987.

Shri R.K. Bansal ... Petitioner

Shri Salman Khurshid Advocate for the Petitioner(s)

Versus

Union of India and others. Respondent

Shri M.L. Verma Advocate for the Respondent(s)
Shri M.K. Ramamurthi for intervener party.

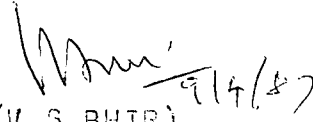
CORAM :

The Hon'ble Mr. V.S. Bhir, Member (A)

The Hon'ble Mr. G. Sreedharan Nair, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?


(G. SREEDHARAN NAIR)
MEMBER (J)


(V.S. BHIR)
MEMBER (A)

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Original Application No.13 of 1986. 9-4-1987.

Shri R.K.Bansal ... Applicant.

vs.

Union of India and others ... Respondents.

For applicant: Shri Salman Khurshid, counsel.

For respondents: Shri M.L.Verma, counsel.

For Intervener party: Shri M.K.Ramamurthi, Sr.counsel.

Coram:

The Hon'ble Mr.V.S.Bhir, Member (A)

The Hon'ble Mr.G.Sreedharan Nair, Member (J)

(The judgment of the Tribunal was delivered by
The Hon'ble Mr.G.Sreedharan Nair)

There is nothing abnormal in a Government servant aspiring for promotion to ^{the} higher echelons of service. But, can a Government servant insist that the Recruitment Rules have to be so amended as to include him in the eligible zone for promotion to a higher post, is the question that has been posed in this application.

2. The post with which we are concerned in this application is that of Director (Fruit and Vegetable Preservation) in the Food and Nutrition Board, Department of Food, Ministry of Agriculture. The recruitment to the post is governed by the Food and Nutrition Board (Non-Secretariat Gazetted Posts) Recruitment Rules, for short 'the Rules'. The provisions relating to the recruitment of Director were included in the Rules by an amendment introduced on the 9th November, 1971. The method of recruitment is prescribed as by

2

13

promotion, failing which by transfer on deputation, and failing both by direct recruitment. The feeder category for promotion is Senior Marketing Officer (Fruit Products)/Deputy Director (Fruit and Vegetable Preservation) with five years ~~in~~ service in the grade. In December, 1985, the Department of Food proposed to fill up the post of Director from amongst the Deputy Directors (Fruit and Vegetable Preservation).

3. In 1972, it was resolved to set up a Consultancy Service Cell under the Food and Nutrition Board for the fruit and vegetable preservation industry for rendering the necessary assistance to the industry in its further development and expansion. As the existing strength of the Directorate was not in a position to take up the consultancy work without the assistance of a self-contained unit for the purpose, separate posts were created for the consultancy service scheme by order dated 27-11-1972. They included inter alia, one post of Joint Director, one post of Deputy Director and one post of Assistant Director. For the purpose of recruitment to these posts, another amendment was made to the Rules on 30-1-1974 by which the mode of recruitment to these three posts was prescribed as direct recruitment.

4. The applicant was appointed as Joint Director (Consultancy Service) by direct recruitment in December 1980. Eversince the appointment, the applicant had been

14

representing for amendment of the Recruitment Rules so far as it relates to the post of Director so as to include the post of Joint Director (Consultancy) ⁱⁿ ~~among~~ the feeder category. His request was finally turned down by the letter from the Ministry of Food and Civil Supplies dated 6-1-1986. Hence the present application.

5. The ground~~s~~ urged is that as the Joint Director (Consultancy) performs the same duties as are performed by the Deputy Director (Fruit and Vegetable Preservation), the denial of his right for consideration for promotion to the post of Director is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution.

6. On behalf of respondents 1 to 3, a reply has been filed wherein it is contended that the Consultancy Cell is a separate unit and the post of Joint Director, Deputy Director and Assistant Director in the Cell are being filled by direct recruitment. Their work relates to consultancy service, while the work of Deputy Directors (Fruit and Vegetable Preservation) is to implement the schemes for compulsory quality and pre-shipment inspection on export of fruit products and supervising enforcement of the Fruit Products Order, 1955. There is no interchangeability as between the two. It is stated that the applicant having actually derived the benefit of direct recruitment to the post of Joint Director (Consultancy) cannot claim inclusion of that post as well, as a feeder category for promotion to the post of Director.

15

7. Three Deputy Directors (Fruit and Vegetable Preservation) have intervened and were allowed to be impleaded as additional respondents. They have also filed a counter on the above lines.

8. The necessity for creation of a post, the method of filling up the same and the qualifications to be prescribed are all matters which have primarily to be decided by the administration, for, the requisite expertise is with them for arriving at a decision on the same. So long as the Tribunal is not satisfied that the decision is arbitrary or is violative of the Constitutional guarantees, it will hesitate to upset the decision by a judicial review.

9. Counsel of the applicant attempted to rest his plea on the vice of discrimination. It was submitted that the qualifications prescribed for appointment to the post of Joint Director (Consultancy), and the duties and functions to be performed by him are similar to those of the Deputy Director (Fruit and Vegetable Preservation) and as such it is highly arbitrary that when the latter is considered as eligible for promotion to the post of Director, the Joint Director (Consultancy) is excluded. On an anxious consideration of the facts, we are not in a position to agree with the counsel of the applicant.

10. It is trite that the principle of equality of opportunity enshrined in the Constitution can be extended only to equals. Can the Joint Director (Consultancy)

2

16

be equated with the Deputy Director (Fruit and Vegetable Preservation), is the question that arises. For answering the same, the factual metrix has to be looked into. It is clear from the Memorandum for Expenditure, Finance Committee, submitted by the Joint Secretary of the Ministry of Agriculture (Department of Food) dated 23-8-1972, copy of which is at Annexure 'F' to the application that the Consultancy Cell in the Food and Nutrition Board is to function as a self-contained unit for rendering necessary assistance to the industry in its further development and expansion. It is clear that various sponsored and conducted studies in regard to development of fruit and vegetable preservation industry have indicated the necessity for modernisation of techniques and equipments not only for increasing productivity, but also for meeting the quality of fruit products meant for exports. Several requests for technical assistance, advice and guidance in the establishment of the new units, modernisation of existing units and introduction of new techniques as well as for the preparation of project reports, feasibility studies and for undertaking techno-economic studies ~~xxx~~ were being received by the Department. In view of this, the decision was taken to develop a technical cell for providing consultancy service for the development

8

17

of the food industry. The post of Joint Director, Deputy Director and Assistant Director in the consultancy service are highly skilled posts to be filled up with persons having the requisite qualifications and experience prescribed in the Rules. It was on this account that those posts were decided to be filled up by direct recruitment and not, be it noted, by promoting Officers from the Board itself, so that the best talent could be tapped and utilised for the specific duties and functions to be discharged by the consultancy cell. It has been specifically stated in the reply filed by respondents 1 to 3 that after the appointment of these Officers the work relating to consultancy service and preparation of project report was completely entrusted to them, and the main work of the Deputy Director (F & V.P.) was only to implement the schemes for compulsory quality and pre-shipment inspection on export of fruit products and supervising the enforcement of the Fruit Products Order, 1955.

Thus, ^{what} we find is that with the establishment of the consultancy service, there has been a complete bifurcation of what may be called the policing function and the consultancy function. There is no mutual inter-changeability of the Officers of the two units. An Assistant Director of the Fruit and Vegetable Preservation Wing is not eligible for consideration for appointment as Assistant Director

2

18

in the consultancy wing or for promotion to the post of Deputy Director of that wing. So also a Deputy Director of Fruit and Vegetable Preservation wing cannot aspire for promotion to the post of Joint Director of the Consultancy Wing. It is in this set up that the plea of the applicant, a Joint Director of the Consultancy Wing, recruited directly to that post, that he is being excluded from consideration for promotion to the post of Director (Fruit and Vegetable Preservation), the next avenue of promotion for the Deputy Director (Fruit and Vegetable Preservation) as per the Rules, is to be assessed. The applicant cannot have the best of ^{both} the ~~two~~ worlds. He cannot be heard to complain that his chance of promotion is affected. That the consultancy service cell is a self-contained unit is not disputed by the applicant, as is clear from the averments in paragraph 11 of the application. The essential duty of the Joint Director (Consultancy) is to function as the head of the consultancy team, as is evident from the duties attached to the post, which are contained in the notification at Annexure 'A' for recruitment to the post. It is seen from the records that the representations submitted by the applicant ^{was} ~~were~~ examined by the concerned Ministry and it was rejected, as the amendment to the Recruitment Rules requested by him was not found necessary. In view of what is stated

2

19

above, we cannot hold that such rejection was
arbitrary or unfair so as to warrant our interference.

11. The application is dismissed.

[Signature]
9.4.1987
(G. SREEDHARAN NAIR)
MEMBER (J)
9-4-1987

[Signature]
(V. S. BHIR)
MEMBER (A)
9-4-1987