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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 199/1986.

DATE OF DECISION: April 17, 1990.

Shri Radha Kant Bharati	Applicant.
Ms. Lalita Kohli with Shri Manoj Swaroop	Counsel for the Applicant.
	V/s.	
Union of India & Others	Respondents.
Shri M.L. Verma	Counsel for the Respondents.

CCRAM: Hon'ble Mr. B.S. Sekhon, Vice Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

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. To be circulated to all Benches of the Tribunal? *No.*

P.C. Jain
(P.C. JAIN)
MEMBER (A)

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Hon'ble Mr. P.C. Jain, Member (A).

(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is is an Assistant Editor of Hindi Bhagirath Magazine, Central Water Commission, Ministry of Water Resources, New Delhi, has assailed communication dated 11.12.1984 from Central Water Commission, New Delhi, to the Registrar, Delhi High Court, wherein it was informed that in pursuance of Delhi High Court orders dated 5.9.1984 in Civil Writ Petition No.CW-1242 filed by the applicant herein, the suitability of the applicant for appointment to the post of Editor (Bhagirath - Hindi) in the Central Water Commission was assessed by the U.P.S.C., who had not found him suitable for being appointed to the above-cited post on a regular basis at the initial constitution as prescribed in the Recruitment Rules. He has prayed for the following reliefs: -

- "(i) to direct the respondent No.1 public service commission to recommend the name of the petitioner for the post of Bhagirath.
 - (ii) to direct the respondent No.2 to appoint the petitioner on the post of editor on the regular basis on the post from 1.9.80 i.e. date of the initial constitution and to pay all the arrears of salary and allowances to him accordingly.
 - (iii) to pass such other order or orders which the Hon'ble Court may deem fit and proper in the circumstances of the case. "
- Dec.

2. The relevant facts, in brief, are that the applicant was appointed on an ad-hoc basis as Hindi Officer in Central Water Commission with effect from 1.6.1971. He was appointed as Assistant Editor (Bhagirath-Hindi) in an officiating capacity with effect from 1.5.1978 after selection by the U.P.S.C. Hindi version of Bhagirath was started in 1974 and the applicant worked as Assistant Editor of this magazine under the control of Director, Central Water Commission. The applicant was working as Hindi Officer and was included in the Editorial Board and edited the journal. Both the posts of Hindi Officer and Assistant Editor (Bhagirath-Hindi) were in the old scale of Rs.650 - 1200. On 1.9.1980, a temporary post of Editor for the Hindi 'Bhagirath' in the Central Water Commission in the old scale of Rs.1100 - 1600 was approved to be created from the date of filling up of this post; the existing post of Assistant Editor in the scale of Rs.650-1200 sanctioned for the Hindi 'Bhagirath' was to stand abolished. A temporary post of Sub-Editor in the old scale of Rs.550-900 was also sanctioned (Annexure E). The Central Water Commission, Editor (Hindi-Bhagirath) Recruitment Rules, 1984 were modified on 7.6.1984 (Annexure G). According to these rules, this post was to be filled "by transfer on deputation failing which by direct recruitment". In the case of 'Transfer on Deputation', officers under the Central Government with 8 years service in posts in the scale of Rs.650-1200 or equivalent and possessing the educational qualifications and experience prescribed for direct recruits are eligible for consideration. However, the following Note in column 10 of the Schedule annexed to the Recruitment Rules (which provides for recruitment by transfer on deputation failing which by direct recruitment) also exists: -

"NOTE: The suitability of the regular holder of the post of Assistant Editor (Bhagirath) in the pay scale of Rs.650-1200 prior to upgradation of the post in the scale of Rs.1100-1600 will be initially assessed by the Union Public Service Commission for appointment to the upgraded post and if assessed suitable, he shall be deemed to have been appointed to the upgraded post of Editor (Bhagirath-Hindi) on a regular basis at the initial constitution."

Prior to the notification of the Recruitment Rules, the respondents tried to fill the post on an ad-hoc basis, but no appointment to the post was actually made. The applicant filed a Writ Petition in the Delhi High Court against respondents 1 and 2 in this case, which was disposed of by the following order dated 5.9.84: -

" Counsel for the parties agree that in terms of the Central Water Commission of Editor (Hindi Bhagirath) Recruitment Rules, 1984, dated 7th June, 1984, the case of the petitioner will be considered and his suitability will be assessed by the Union Public Service Commission for appointment to the upgraded post of the Editor. If he is assessed suitable, he shall be deemed to have been appointed to the upgraded post of the Editor (Hindi-Bhagirath) on a regular basis at the initial constitution."

Accordingly, the matter was referred to the U.P.S.C., who, in their letter dated 30.11.1984 wrote to the Secretary to the Govt. of India, Ministry of Irrigation, New Delhi, "that the UPSC, after perusal of the particulars of service and experience along with the character roll and bio-data of Shri R.K. Bharti received in connection with the case cited above advise that Shri Bharti is not suitable for appointment to the upgraded post of Editor (Bhagirath - Hindi) on a regular basis at the initial constitution as prescribed in the recruitment rules." A copy of the above letter of the UPSC was produced in pursuance of our direction to the respondents. The applicant has assailed this assessment of the UPSC on the ground that in spite of his request, the UPSC have not intimated to him the reasons due to which he has not been found suitable. He has also alleged bias and mala-fides against the respondents in not giving him the designation of Editor and pay and allowances for that post. He also alleges that the decision is against the principles of natural justice, is inequitable, revengeful, mischievous and against all existing rules and regulations and policies.

(Signature)

3. The respondents have contested the claim of the applicant and have stated that he could not be designated / appointed as Editor automatically with the creation of the post of Editor and his suitability had been assessed by the Union Public Service Commission in accordance with the provisions of the Recruitment Rules. The allegations of harassment, mala-fide etc. have been denied. As the applicant was not assessed suitable for appointment to the upgraded post of Editor (Bhagirath-Hindi), action was taken to fill up the post by transfer on deputation and then by direct recruitment. As no eligible candidate was forthcoming for appointment by method of deputation, the post was advertised for being filled up by direct recruitment and a candidate has since been nominated by the UPSC, but no appointment has been made.

4. We have carefully perused the records of the case and have also heard the learned counsel for the parties.

5. It is not in dispute that as per Note under column 10 in the Schedule to the Recruitment Rules, the suitability of the applicant was to be assessed by the U.P.S.C. for the post of Editor (Bhagirath-Hindi) created with effect from 1.9.1980 before the post could be filled up either by deputation or by direct recruitment. It is also not in dispute that the U.P.S.C. has accordingly assessed the applicant but has not found him suitable. The learned counsel for the applicant strongly urged before us that while assessing the suitability, the U.P.S.C. was not expected to consider the applicant as if it were a selection amongst various candidates and he went on to argue that the applicant being qualified for the job, acted as Editor of this magazine from its inception sincerely and efficiently and there is no reason as to why he should not have been assessed by the U.P.S.C. as suitable for this post. He also emphasised that if there was anything against the applicant, the U.P.S.C. should have given him an opportunity to explain before finalising its assessment.

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6. While it is true that it was not a case of selection on merit, yet the fact remains that as per the provisions of the Recruitment Rules, the suitability of the applicant was to be assessed for a higher post. Obviously, such an assessment has to take into account the qualifications prescribed, the conduct and performance of the applicant as reflected in his Character Roll, his bio-data and experience, which is exactly what has been done by the U.P.S.C. We have also perused the Character Roll of the applicant for the years 1979 - 1983 with a view to seeing whether there were any adverse entries in his confidential reports and whether the adverse entries had been communicated to the applicant and there had been any representation pending thereon. The learned counsel for the respondents made available to us, with a copy to the learned counsel for the applicant, an abstract of adverse remarks awarded to the applicant for the period 1.1.79 to 1987. It may be stated here that at our request, the learned counsel for the respondents clarified at the bar that the U.P.S.C. had considered the Annual Confidential Reports of the applicant for the period 1979 to 1983 and we have examined this only for the period 1.1.1979 to 1983. The U.P.S.C. is also a respondent in this case. It is found that the adverse remarks for the period 1.1.79 to 31.12.79 were communicated to the applicant, vide D.O. letter dated 22.7.80. The applicant represented on 21.8.80. His representation was rejected, vide communication dated 24.2.1981. For the period 1.1.80 to 6.10.80, the adverse remarks were communicated vide D.O. letter dated 20.3.82 and the representation of the applicant made on 31.5.1982 was rejected vide communication dated 16.12.82. The adverse remarks for the year 1983 were communicated vide D.O. letter dated 26.9.84 and the representation was made on 12.12.84. The representation was of course, rejected vide communication dated 29.4.86, but no representation was pending when the U.P.S.C. conveyed its

assessment, vide their letter dated 30.11.1984. Moreover, for the adverse remarks for the year 1983, the representation dated 12.12.84 cannot be said to be validly pending inasmuch as it was not made within the prescribed period of one month from the date of receipt of the communication of adverse remarks. We are, therefore, not in a position to find any fault or legal infirmity in the process of assessment made by the U.P.S.C. The allegations of malafide, especially against the U.P.S.C., respondent No.3, also do not have any basis inasmuch as the applicant was recommended by the U.P.S.C. themselves for appointment to the post of Editor (Bhagirath) for its Engli^{sh}/version, vide their letter dated 9.1.1985 on the basis of direct recruitment.

7. Another point vehemently urged before us by the learned counsel for the applicant was to the effect that the applicant has been working as Editor of Bhagirath-Hindi since its inception - first in his capacity as Hindi Officer and then in his capacity as Assistant Editor of this magazine. Copies of some issues are also filed in support of that contention. In none of these copies, however, he is shown as Editor. In the issue for October - December, 1982 (Gujarat Ank), he is shown as 'Prabhari Sampadak'. In the issue for July - September, 1987, he is shown as 'Sahayak Sampadak'. In the issue for October - December, 1989 his name does not appear at all. Moreover, he has not been able to show any proof of ~~xx~~ having been appointed as Editor of this magazine. For certain specified purposes, he was allowed "to act as Editor, for Editorial purposes only". This was done under the signature of S.S. Iyer, Director (Tech. DOC.) with a view to authorising the applicant to visit the Government Press on his behalf and arrange the final printing of the Hindi journal. In this communication also (Annexure R-II), he has mentioned ~~xx~~ R.K. Bharti^{as} / Assistant Editor and the communication also states that "Though Shri Bharti is an Assistant Editor, but de-facto he is handling

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all editorial works" and, therefore, he was permitted to act as Editor for editorial purposes only. This order was also not operating for the entire period for which the applicant claims to have acted as Editor. In the pleadings of this case, the applicant himself has also used different designations for himself. In para 3 of his rejoinder, it is stated "that though there was an editorial board but the petitioner was the Executive Editor since the inaugural issue and acted as Member Secretary of the Board". In para 4, he has used the term "working Editor" which he equates with the term "executive editor". In the same para, he states that "he was the Member Secretary in the Editorial Board due to his being incharge of the Editorial work." In any case, the fact that the applicant might have looked after some duties which go with the post of Editor of a magazine, would not ipso-facto either make him the Editor or give him the appointment to such a post, in violation of the Recruitment Rules.

8. We may also quote with respect the observations of the Supreme Court in the case of DALPAT ABASAHEB SOLUNKE Vs. DR. B.S. MAHAJAN (AIR 1990 S.C. 434): -

"It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection or proved mala fides affecting the selection etc."

9. We have already stated above that the U.P.S.C. assessed the suitability of the applicant in terms of the Recruitment

U.C.

Rules and that we cannot find any fault with the process of selection.

10. In view of the above discussion, the application is devoid of merit and is accordingly dismissed. Parties will, however, bear their own costs.

Ucan
(P.C. JAIN)
MEMBER(A)

B.S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN

Provenanced by me to day in the open court.

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17/4/1998