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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 504/86

DECIDED ON : 15.9.1992

S. P. Arora

... Applicant

Vs.

Union of India & Ors.

... Respondents

CORAM : THE HON'BLE MR. JUSTICE RAM PAL SINGH, V.C.(J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri B. S. Charya, Counsel for the Applicant

Shri K. C. Mittal, Counsel for Respondents
No. 1 and 2

Shri B. K. Aggarwal, Counsel for Respondent No.4

J U D G M E N T (ORAL)

Hon'ble Shri P. C. Jain, Member (A) :-

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved by his non-selection to the post of Accountant under the Central Government Health Scheme (for short CGHS). He has impugned office order dated 13.12.1983 (Annexure P-1) by which Shri B. K. Bhalla, respondent No.3, was promoted to the aforesaid post as also order dated 20.10.1984/22.10.1984 (Annexure P-2) by which Shri R. P. Garg, respondent No.4, was similarly promoted along with one Shri Tara Chand. He has prayed for quashing of the aforesaid two impugned orders; for a declaration that he is entitled to pay and allowances for the post of Accountant as he has been performing the duties of the said post since January, 1981; that respondents 1 and 2 be asked to treat him as having been appointed as Accountant w.e.f. 13.12.1983 and pay him pay and allowances from the said date, or, in alternative, grant him such other relief as he may be found entitled to.

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2. Official respondents No. 1 and 2 have contested the O.A. by filing their return. Similarly, respondents No. 3 and 4 have also filed their replies. Shri B. S. Charya, counsel, is present on behalf of the applicant. Shri K. C. Mittal, counsel, is also present on behalf of the official respondents. While Shri B. K. Aggarwal appears on behalf of respondent No.4, none is present for respondent No.3. The applicant has filed rejoinders to the counter replies filed by the respondents. We have perused the material on record and also heard the learned counsel for the parties present.

3. The recruitment rules for the post of Accountant in the Central Government Health Scheme, 1974 were amended by notification dated 1.10.1983 (Annexure P-5). As per these amended rules, the post of Accountant is a selection post and is to be filled up by promotion failing which by transfer on deputation. In this case as the post in dispute has been filled up by promotion, we are concerned with the eligibility prescribed in the recruitment rules for purposes of filling up the post of Accountant by promotion. In this regard, provisions in column 12 of the schedule attached to the aforesaid recruitment rules are extracted as below :-

"Promotion

(i) Junior Accountant with five years regular service in the grade or with 10 years combined service in the grade of Junior Accountant/ Upper Division Clerk and possesses three years experience in Cash & Accounts and Budget work.

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Upper Division Clerks with 10 years service in the grade who have undergone training in Cash and Accounts work in the Institute of Secretariat Training and Management or equivalent and possess three years' experience in Cash and Accounts and Budget work."

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4. From the above it is clear that in respect of Upper Division Clerks, three requirements are prescribed, namely, (1) 10 years' service in the grade; (2) undergone training in cash and accounts work in the Institute of Secretariat Training and Management or equivalent; and (3) possesses three years' experience in cash and accounts and budget work. The applicant as well as respondents 3 and 4 whose promotion is under challenge, all belong to the category of Upper Division Clerks. All three have admittedly undergone training in cash and accounts work in the Institute of Secretariat Training and Management. The dispute, as per the contentions of the applicant, is that respondent No.3, namely, Shri B. K. Bhalla, did not have three years' experience in cash and accounts and budget work on the date on which the DPC met in October, 1983, he having been appointed as Junior Accountant on 14.9.1981. As regards respondent No.4, namely, Shri R. P. Garg, the contention of the applicant is that he had neither put in 10 years' service in the grade of UDC nor did he have the requisite three years' experience in cash and accounts and budget work. He has, therefore, contended that both respondents 3 and 4 were not eligible for being considered for promotion by selection to the post of Accountant, and that he was the sole candidate eligible for consideration for such a promotion. Secondly, the argument is that if respondents 3 and 4 had not been considered as being not eligible, he would have been selected and promoted to the post of Accountant with effect from the date on which respondent No.3 was so promoted.

5. The case of the official respondents is that two posts of Accountant fell vacant for which the DPC met on 7.12.1983. One of these two posts was reserved for a Scheduled Caste

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candidate and the other was unreserved. Respondent No.3 was considered eligible and was selected against the unreserved post^u and promoted vide order dated 13.12.1983 (Annexure P-1). None was selected for the reserved vacancy. Accordingly, the DPC again met on 20.10.1984 to fill up two posts — one for reserved category and the other for general category as another post had fallen vacant. The DPC is said to have considered the cases of all eligible candidates and recommended Shri R. P. Garg, respondent No.4, a general category candidate and Shri Tara Chand, a Scheduled Caste candidate for the aforesaid two posts and both these were promoted to the post of Accountant vide impugned order dated 20/22.10.1984 (Annexure P-2). There is no specific and categorical denial in the counter affidavit filed by respondents 1 and 2 ^uof the contention of the applicant in the O.A. that respondents 3 and 4 were not eligible for consideration. However, both the respondents 3 and 4 in their replies have asserted that they were eligible.

6. () It needs to be stated here that while prescribing an experience of three years in cash and accounts and budget work for UDCs with ten years' service in the grade, the nature and content of this experience has nowhere been prescribed or notified. It is in view of this fact that, in our opinion, there is controversy about the eligibility for consideration for promotion to the post of Accountant. We, therefore, perused the minutes of the DPC held on 7.12.1983 as also the second DPC which met on 20.10.1984. In the first meeting, the DPC comprising of six members, considered S/Shri B. K. Bhalla, respondent No.3, and S. P. Arora, ^{Ce. applicant} ~~Respondent No.4~~ herein, as eligible for consideration "in the context of the terms and conditions as laid down in the notified Recruitment Rules", and on the basis of the Ce.

respective merits of the aforesaid two candidates recommended Shri B. K. Bhalla for appointment on promotion to the unreserved post. For the reserved vacancy they considered three names but held that none of them possessed the requisite conditions of the length of service for eligibility for consideration either in the post of Junior Accountant or Upper Division Clerk or combined as specified in the recruitment rules. The DPC accordingly suggested that another meeting be held in April, 1984 by which time these candidates would have acquired the requisite qualifying length of service of ten years in the post of UDC and the experience. In the second DPC held on 20.10.1984 which also had six members, Shri Tara Chand was found as the only eligible candidate for the reserved vacancy and it was also held that he fulfilled the requirement of ten years' service as UDC and fulfilled the condition of cash and accounts training as also he had the requisite experience of cash and accounts and budget work. For the unreserved vacancy two candidates, eg., S/Shri S. P. Arora (applicant herein) and R. P. Garg (respondent No.4), were considered. The DPC recorded that the above two candidates had fulfilled the requirement of ten years of service as UDC and also the condition of cash and accounts training while having the requisite experience of cash and accounts and budget work. The DPC also considered seven other candidates and for the reasons mentioned in the minutes thereof it was held that they did not meet the requisite requirements prescribed in the rules. In regard to still another candidate, the DPC held that he had already been promoted in a regular capacity as Office Supdt. and his case for retrospective seniority in that grade was also pending in the court of law, and

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as such, he was not considered for promotion to the post of Accountant. Shri R. P. Garg was consequently recommended for appointment to the unreserved post.

7. As already stated above, the scope and the content of the experience as prescribed in the recruitment rules has nowhere been defined. It is not unusual to find that even an incumbent of a post which is not specifically designated either as a Cashier or an Accountant or a Budget Assistant/ Clerk, the other Ministerial staff handle such work in addition to certain other duties. Whether the experience is whole time or part time, the experience may be there and it is ~~only~~ ^{in such circumstances,} for the competent authority to determine whether on the basis of the service record of a particular candidate he is deemed to have possessed the requisite experience as prescribed in the rules. In view of the clear-cut findings of the DPC on the point of eligibility of respondents No.3 and 4, as already discussed above, we are of the considered view that it is not a fit case for the Tribunal to interfere in the process of judicial review. What has to be noted is that in both the aforesaid DPC meetings the applicant was considered but was not found fit for being recommended as a selected candidate for promotion to the post of Accountant. There are no allegations of malafide and in any case no particulars of such malafide have been given. After a perusal of the minutes of the DPC on both the occasions, we also do not see any reason to suspect any hanky-panky; the ~~only~~ ^{only} point ^{to note is} that both the employer as well as the DPC considered and held that both respondents No. 3 and 4 were also eligible in terms of the experience prescribed in the recruitment rules. The contention of the applicant that

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respondent No.4 having been appointed to the post of UDC in April, 1974 as per the seniority list at Annexure P-6 was not eligible on the date by which the applications for consideration for promotion were invited in 1983, is really not relevant at all. We say so, firstly, because respondent No. 4 was not considered by the DPC which met in December, 1983; he was considered only in the DPC held in 1984 and by that time he had put in ten years' service even on the basis of the contention that he was promoted to the post of UDC only in 1974, though respondent No.4 has contended in his reply that he was appointed to the post of UDC in 1971. Secondly, there is no provision in the recruitment rules, and in any case no such provision has been brought to our notice, that the relevant date for determining eligibility was the date which was prescribed as the last date for receipt of applications for consideration for promotion. In the absence of any such specific provision, the relevant date would be the date on which a person is considered for promotion. Moreover, when a post is required to be filled up by promotion, it is not necessary to invite any applications for consideration for promotion, especially when the selection by promotion is the prescribed method in terms of the recruitment rules.

8. In the light of the foregoing discussion, we are of the considered view that it is not a fit case for interference by the Tribunal and accordingly the O.A. is dismissed leaving the parties to bear their own costs.

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

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(RAM PAL SINGH)
VICE CHAIRMAN (J)