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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

556

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DATE OF DECISION 24.6.1987

Shri R.K.Gupta

Applicant
Petitioner

Applicant in person

~~Advocate for the Petitioner(s)~~

Versus

Union of India & others

Respondent s

Shri C.D.Peula, Section Officer ~~Advocate for the Respondent(s)~~

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, 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 to be circulated to all the Benches? No

h. kumar
(Kaushal Kumar)
Member

K. Madhava Reddy
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN. NO. CA 556/1986

June 24, 1987.

Shri R.K.Gupta

Applicant.

Vs.

Union of India & others ... Respondents.

CORAM:

Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

Hon'ble Mr. Kaushal Kumar, Member.

For the Applicant ... Applicant in person.

For the Respondents ... Shri C.D. Peula, Section Officer.

(Judgment of the Bench delivered by Hon'ble Mr. Justice K.Madhava Reddy, Chairman).

This is an application under Section 19 of the Administrative Tribunals Act, 1985, for setting aside Office Order No.89/Estt.I Section dated 11.7.1986 by which Shri B.S.V. Rao, Deputy Director General (Engineering), in the Directorate General of Technical Development, third Respondent herein, was granted extension of service for a period of three months with effect from 1.7.1986 to 30.9.1986 and for a declaration that the post of Deputy Director General (Engineering) vice Respondent No.3, fell vacant with effect from 1.7.1986 and for a further direction against Respondents 1 and 2 to consider the applicant for promotion to the post of Deputy Director General (Engineering) from 30.6.1986 and to give him ad hoc promotion with effect from 1.7.1986 till the post is filled up on a regular basis.



2. The applicant is an Industrial Adviser (Engineering) and was eligible to be considered under the Rules governing appointment to the post of Deputy Director General (Engineering) in the Directorate General of Technical Development. The 3rd Respondent, Shri B.S.V. Rao was to retire from service on 30.6.1986 (afternoon) on attaining the age of superannuation. The applicant claims that he was eligible for consideration even in the year 1984 and questioned the proceedings of the Departmental Promotion Committee meeting held on 29.9.1984. When the Departmental Promotion Committee was about to meet to consider all the eligible candidates including the applicant to select one of them for the post of Deputy Director General (Engineering) which was to fall vacant upon Shri B.S.V. Rao, Respondent No.3 attaining the age of superannuation, the applicant apprehending that he may not be selected in view of the adverse entries recorded in his Confidential Reports which according to him were not justified and which he called in question in Original Application No.322/1986, sought an interim order to restrain the respondents from holding the DPC. This Tribunal while admitting OA 322/86 by its interim order dated 14.5.1986 directed as under:

"The D.P.C. shall not be held pending further orders on this petition. In the meanwhile, the respondents are restrained from seeking relaxation of eligibility conditions for promotion to the post of Deputy Director General (Engg.) for the _____3.

Kant

vacancy occurring on 30.6.1986. Notice (Dasti) returnable on 28.5.1986".

As a result of the above interim order of the Tribunal, the Departmental Promotion Committee could not hold its sittings to select any candidate for appointment to the post of the Deputy Director General (Engineering). In those circumstances, a proposal for extension of the services of Shri B.S.V. Rao initially for a period of one year was sent. This proposal was to be approved by the Appointments Committee of the Cabinet. As approval to the proposal for extension was not received by 30.6.1986, from the Appointments Committee of the Cabinet, the Industry Minister on 27.6.1986 allowed the 3rd Respondent to continue as Deputy Director General (Engg.). Vide Demi Official letter dated 30.6.1986 made a suggestion to the Joint Secretary, while conveying the same, that a suggestion was made to obtain approval of the Appointments Committee of the Cabinet to the proposal for extension of the services of Respondent No.3. The Appointments Committee of the Cabinet conveyed its approval granting extension of service of the 3rd Respondent for a period of three months, that is, upto 30th September, 1986 vide letter dated 10.7.1986, as a special case. It is this extension that is called in question/this application.

It is the case of the applicant, who argued in person and also submitted written arguments, that the extension granted to Shri B.S.V. Rao, the 3rd Respondent herein was illegal - firstly because the applicant was eligible for being promoted on an ad hoc basis and

secondly because the extension could not be granted to the 3rd Respondent on 10.7.1986 when he had by the efflux of time ~~had~~ retired on 30.6.1986 on attaining the age of superannuation. This contention of the applicant proceeds upon the footing that the Respondents were obliged to fill in the vacancy by ^{an} ad hoc promotion.

It cannot be disputed that the post of Deputy Director General (Engg.) which had fallen vacant was a selection post. The Rules require that the Departmental Promotion Committee should consider all eligible candidates and make its recommendations. But it was the applicant who secured an order from this Tribunal restraining the Departmental Promotion Committee from meeting and considering the eligible candidates pending disposal of Application No.322 /86 (supra). In those circumstances, having regard to the exigencies of administration, if the post had to be filled in, several options were open to respondents - either to grant extension of service to the incumbent on account of whose retirement the vacancy was occurring or to re-employ him or someone else or to appoint someone eligible on ^{an} ad hoc basis by way of promotion. In the absence of any statutory rule, it was open to the appointing authority to choose one or the other alternative method of filling ⁱⁿ that post. If the appointing authority has chosen to extend the services of the existing incumbent, Respondent No.3



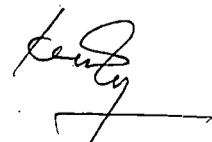
herein, the applicant cannot complain that his right has been affected. No employee has a right to claim that any post which is lying vacant should be filled in on an ad hoc basis. His right is only to be considered for appointment in accordance with the Rules. Although the Respondents intended to fill in that post in accordance with the Rules, they could not do so because of the interim order of this Tribunal made at the instance of the applicant himself. No Rule or Regulation has been brought to our notice which compels the Respondents in those circumstances to necessarily fill in that post on an ad hoc basis by way of promotion. If the Respondents had chosen to fill in that post by granting extension to the 3rd Respondent, it cannot be termed as illegal or improper so as to justify any interference by the Tribunal. It is, however, argued by the applicant that granting extension to the 3rd Respondent was itself illegal inasmuch as the Industry Ministry was not competent to grant such an extension on 27.6.1986 and that only the Appointments Committee of the Cabinet could do so. From the record, it is clear that the proposal to grant extension for a period of one year was made much before the 3rd Respondent attained the age of superannuation. But in the exigencies of administration, this approval was not received before 30.6.1986. The Minister concerned, therefore, allowed Shri B.S.V. Rao to continue subject



to the approval of the Appointments Committee of the Cabinet to the proposal for extension already submitted to it. The approval was received thereafter but for the reduced period of three months. The subsequent order of the Appointments Committee of the Cabinet of which is the competent authority puts a seal/approval on the action taken by the Industry Minister, ordering extension of service in anticipation of approval.

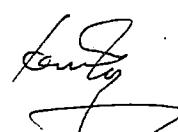
In the circumstances, no exception can be taken to the extension granted by the Appointments Committee of the Cabinet after Respondent No.3 attained the age of superannuation.

It is the further contention of the applicant that extension was obtained contrary to what is contained in column 12 (iv) of Annexure III in GIMF O.M.No.26011/1/77-Estt. (B) dated 18.5.1977. Column 12 (iv) of the proforma inter alia lays down that the proposal for the grant of extension/re-employment to Government servants seeking beyond the age of superannuation / approval of the Appointments Committee of the Cabinet, should indicate whether some officiating or ad hoc arrangements can be made, pending fresh appointment by proper selection? If not, why not? Basing on this, the applicant contends that no extension can be granted and only if ad hoc or officiating arrangements cannot be made by way of promotion, extension of service of a retiring public servant should be considered. We are unable to accept



this contention. The Office Memorandum dated 18.5.77 itself does not lay down that the extension of service should be proposed or would be considered only if officiating or ad hoc arrangements could not be made. That apart, this proforma requires the information to be supplied to the Appointments Committee of the Cabinet to enable it to take a decision on the proposal for extension of service. This does not vest any right in an employee that at first the feasibility of making officiating or ad hoc arrangement should be considered and only if that is not possible, the extension of service or re-employment should be ordered.

that
It was also argued/as the 3rd Respondent had already and retired from service on 30.6.1986, if at all, only he could be re-employed; no extension could be granted on 10.7.1986 when the Appointments Committee of the Cabinet approved the extension. This contention ignores the fact that the 3rd Respondent was allowed to continue in service pending approval of the Appointments Committee of the Cabinet and he accordingly continued. The approval of the Appointments Committee of the Cabinet to the action already taken validates continuance of the 3rd Respondent with effect from the date he was to retire on attaining the age of superannuation, that is 30.6.1986. Reliance for this contention is placed on



the judgment of the Supreme Court in TEJ PAL SINGH Vs. STATE OF U.P. AND ANOTHER (1). That was a case of compulsory retirement of Additional District and Sessions Judge in State of U.P. under Fundamental Rule 56 and Article 235 of the Constitution. The question for consideration in ~~that~~ case was whether the order of compulsory retirement initially made against the appellant on the recommendation of the Single Judge and subsequently approved by the Administrative Committee of the High Court was valid. The Court held that the order of compulsory retirement made by the Governor without having before him the recommendations of the Administrative Committee of the Full Court was void and ineffective.

The principle enunciated in the judgment of the Supreme Court cannot be applied to a case of extension of service which the Appointments Committee of the Cabinet was competent to order even without recommendations. The Appointments Committee of the Cabinet was also competent to order re-employment in a situation where the Industry Minister had already ordered the 3rd Respondent to continue in service pending approval of the Appointments Committee of the Cabinet. The Appointments Committee of the Cabinet later, taking this fact into account, approved the extension proposed but reduced only the period to three months. Such an approval necessarily relates back to the date from which the extension was sought. In the decision of



the Supreme Court referred to above, the control over the judiciary including higher judiciary was vested in the High Court as such and without the recommendations of the High Court which power was delegated to the Administrative Committee, the Governor could not order compulsory retirement of a Judicial Officer. The recommendations of the Single Judge could not be deemed to be the recommendations of the High Court. The question whether it was a proper order or whether the compulsory retirement was to be given effect from the date of the recommendations of the Single Judge or of the Administrative Committee did not fall for consideration.

In the case before us, there can be no dispute that even without the recommendation of the Industry Minister, the Appointments Committee of the Cabinet was fully competent to order extension and in fact the 3rd Respondent was allowed to continue in service. The extension given by the Appointments Committee of the Cabinet to the 3rd Respondent must be deemed to operate from 1.7.1986.

In our opinion, this decision would not help the applicant's contention. Further, when the applicant has no right to be promoted on an ad-hoc basis to the post of Deputy Director General (Engineering), he cannot complain of an extension granted to the 3rd Respondent, more so when that situation was brought about by the applicant



himself.

The applicant next contended that the 3rd Respondent is holding a public office and when the extension of his services is illegal, irrespective of whether the applicant has a right to be appointed to that post by way of promotion on an ad hoc basis or not, he is entitled to question the extension. As a proposition of law, it is undoubtedly correct that if any person is holding a public office under the authority of law, it can be questioned by any person. It is not the case of the applicant that the appointment was not made by a competent authority. We have held above that the Appointments Committee of the Cabinet was competent to grant the extension to the 3rd respondent with effect from 1.7.1986. So long as the order of the Appointments Committee of the Cabinet granting extension to Respondent No.3 stands, it cannot be said that he is holding a public office without the authority of law. That being so, no question of issuing a writ of quo warranto arises.

In this view of the matter, this application fails and is accordingly dismissed but in the circumstances of the case with no order as to costs.

K. Kumar

(Kaushal Kumar)
Member
24.6.1987.

K. Madhava Reddy

(K. Madhava Reddy)
Chairman
24.6.1987.