

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

9

O.A. 1088/86

Date of decision: 16.1.92

S.K.Mukherjee

.. Applicant.

Versus

Union of India

.. Respondents.

Sh.R.L.Sethi

.. Counsel for the applicant.

Sh.M.L.Verma

.. Counsel for the respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J).
The Hon'ble Sh.P.S.Habeeb Mohamed, Member(A).

J U D G E M E N T

(Delivered by Hon'ble Sh.P.S.Habeeb Mohamed, Member(A)).

In this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, Sh.S.K.Mukherjee, Deputy Fire Adviser, Ministry of Home Affairs has prayed for the issue of directions by the Tribunal:
(1) stopping the process of recruitment to the post of Fire Adviser as the process will act to his detriment
(2) considering him for promotion with effect from 16.9.85, the date on which he completed three years' regular service and (3) for paying him the officiating pay for performing the duties of Fire Adviser w.e.f. 1.4.84, from which date the post of Fire Adviser fell vacant.

2. During the hearing of the case on 13.1.1992, the learned counsel for the applicant produced for our perusal a copy of the Government of India (Ministry of Home Affairs) notification No.I-1/2611/3/-89-AD(CD) dated 5.10.90 appointing him as Fire Adviser for a period of six months on ad-hoc basis from 7.9.90/till his retirement on superannuation or till the regular incumbent joins the post, whichever is earliest.

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3. The undisputed facts are that the recruitment rules for the post of Fire Adviser, notified by the Home Ministry in No.6/25/70-ER dated 14.2.72 prescribes that it is a selection post and prescribes for direct recruitment: (1) a degree of a University (2) associate membership of the Institute of Fire Engineers (3) about ten years' experience in a rank not below the rank of Divisional or Regional Fire Service Officer (all these qualifications being relaxable at U.P.S.C.'s discretion in respect of candidates well qualified). For promotion, the candidate must be a Deputy Fire Adviser with three years' service in the grade (regular). For transfer/deputation, officers not below the rank of Divisional or Regional Fire Service Officers with about ten years' service would be eligible - but in the method of recruitment, it is specified that it will be by promotion, transfer/deputation or direct recruitment; the method of recruitment will be decided in consultation with U.P.S.C. each time a vacancy arises. The post of Fire Adviser fell vacant on 31.3.1984 and the method of transfer on deputation was resorted to (as ^{per} the reply of the respondents). But the person selected by U.P.S.C. was from the Indian Petro-Chemical Corporation (a Public Sector Undertaking) and thus he was not eligible for appointment as Fire Adviser. Hence, the selected person by U.P.S.C. was not appointed to the post of Fire Adviser. It is not disputed by the applicant that he was not eligible, according to the rules for promotion, at the time of the advertisement because he qualified in 1985 only. Though the petitioner was stated to have sent representations to the Home Ministry and U.P.S.C. on 13.8.86 and 15.10.86 (as

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per counter), ²According to the applicant's counsel it was only in 1984 the the applicant sent the representation and not in 1986. Anyway, it is clear that the post remained vacant and he was appointed, as stated earlier, on adhoc basis only in 1990.

4. Though the applicant states that he performed the duties of the post of Fire Adviser from 1984, when the post fell vacant, the learned counsel for the respondents stated, during arguments that he was not appointed to hold charge of the post. The applicant has been unable to file any order appointing him to discharge the duties of the post.

5. The applicant is on strong grounds when he states that the recruitment rules are unorthodox in the sense, that for each vacancy in the post the mode of recruitment is to be determined each time. We also notice that this provision is capable of misuse, ^{but} we do not go into the matter further and while not upholding the stand of the applicant's counsel that promotion is the first preferred method of recruitment, we must say, on the one occasion when U.P.S.C. selected a person, it was not according to the rules. The post remained vacant ^{through} ~~although~~; it was only in 1990 the appointment of Fire Adviser was made. The applicant became eligible in 1985 itself. There is nothing to show, that the post became redundant or that it was declared surplus.

6. The respondents' stand in the reply is, that the applicant has completed three years' service in September, 1985 but denies that promotion is the first method of recruitment - but no tangible reasons have

been given, as to why any of methods of recruitment was not resorted to during the period from 1985 till 1990, when ad-hoc appointment of the applicant was made.

7. It is not necessary for us to decide in this matter, whether methods of recruitment have been violated. The applicant became eligible in 1985 by the promotion method. The post was vacant. The respondents could have taken action to fill up the post. We are not saying that the applicant should have been appointed straightaway in 1985, when he completed three years' service. It is clear now that he has been promoted. *Shankar*

in question 4
8. We find that the ends of justice would be met, in the case for considering him for regular promotion on the appropriate date, certainly much earlier to 1990. The respondents should convene the D.P.C. immediately and consider his case for promotion and issue orders of his regular promotion in modification of the earlier order within a period of two months from the date of receipt of a copy of this order. He should be considered for notional promotion, earliest from 1985 (after completion of three years' regular service in the Deptt.). His pay must be fixed notionally, though he would not be entitled to arrears of pay before he assumed charge of the post by virtue of the notification of the Home Ministry, dated 5.10.90. His pay should be fixed, from time to time on this basis and retirement benefits also fixed and paid on this basis.

9. As there is no order appointing him to discharge the duties of the post of Fire Adviser in 1984, when

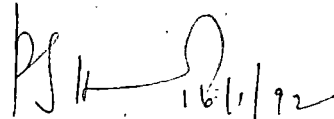
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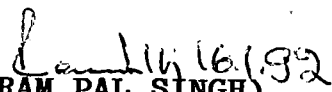
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the post fell vacant, we are not inclined to pass any order on the prayer for payment but we would direct the respondents to consider the request sympathetically and pass orders thereon, also within a period of two months.

The application is accordingly disposed of with no order as to costs.


(P.S. HABEEB MOHAMED)
MEMBER(A)


(RAM PAL SINGH)
VICE CHAIRMAN(J)

SV

Dy. No 123/92 - J. II
6-4-92

No. 97/92/FSP/2117(A)
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

By Regd A.D.

(15)

FARIDKOT HOUSE
COPERNICUS MARG
NEW DELHI.

31-3-92

To,

The Deputy Registrar (J),
Central Administrative Tribunal,
Bangalore Bench

SUB:- CIRCULATION OF REVIEW APPLICATION NO. 97 / 92
IN OA/TA.....1088/89 86

Sir,

I am directed to forward the Review Application bearing No. 97/92..... in OA/TA. 1088/89..... alongwith the remarks of the Hon'ble Chairman for submission to Hon'ble Mr. P. S. Hakeem Mhd...... Vice Chairman/Member of your Bench.

The Review Application may be returned after passing the orders of the Hon'ble Vice Chairman/Member.

Yours faithfully

C. S. S. S.

Section officer (FILING)