

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1173 198 6
T.A. No.

DATE OF DECISION 24.12.86

Shri B.K.Pal Choudhry

Applicant
Petitioner

Shri Bapurao Pakhiddey

Applicant
Advocate for the Petitioner(s)

Versus

Union of India & Anr.

Respondent(s)

None

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

(Kaushal Kumar)
Member
24.12.86

(K. Madhava Reddy)
Chairman
24.12.86

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

D.A. 1173/86

B.K. Pal Choudhry Applicant

vs.

Union of India & Anr. Respondents.

24.12.1986

Applicant through Shri Bapurao Pakhidday, Advocate.

As part of the proposals approved for rationalisation of the functioning of the Directorate of Advertisement and Visual Publicity, it was decided to abolish certain centres and units of the Directorate. This was resulting in abolition of 68 posts in various categories including the post of Deputy Chief Visualiser. It was tentatively decided to abolish the posts with effect from 31.12.1986. It was also decided that the Ministry should approach the President for sanction of the abolition of posts. In the meanwhile, the Divisional Heads were required to arrange preparation of inventories and were also further required to forward their suggestions as to how those inventories etc. should be utilised and/or disposed of. It is this order that is impugned by the applicant, who is working as the Art Executive (Visualiser) in the D.A.V.P. primarily on the ground that his chances of promotion to the post of Deputy Chief Visualiser, which has been lying vacant for the last one year, are totally wiped off. It is his case that he has been discharging the duties of the Deputy Chief Visualiser ever since it fell vacant. It is his further case that the nature of the work of Chief Exhibition Officer is altogether different from that of the Deputy Chief Visualiser. As such, the post of Deputy Chief Visualiser could not and ought not to have been abolished. He states that he had surrendered his chance of promotion to the post of Chief Exhibition Officer in favour of his junior only because the nature of duties attached to this post were different. Now that the post of Deputy



(3)

Chief Visualiser is sought to be abolished, he will become junior to the Chief Exhibition Officer, which is manned by his junior. The applicant also further contends that this post is referred to in the Recruitment Rules and unless the Rules are amended, the post cannot be abolished.

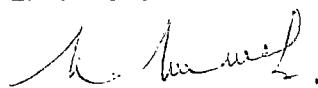
2. We are unable to agree with any of these contentions. Creation or abolition of a post is entirely in the discretion of the President. No court can compel the creation or abolition of any post. That lies in the administrative discretion of the Executive which decision has to be taken having regard to the exigencies of administration. If a post is created, even then it is not obligatory that any rules should be framed for recruitment to that post. So long as no rules are framed, appointment to the post can be made in exercise of the executive power vested in the President and Union of India under Article 53 of the Constitution. Of course, once the proviso to Recruitment Rules are framed in exercise of Article 309 of the Constitution or by an Act of Parliament, the appointing authority is obliged to conform to the rules or the Act, as the case may be, in making appointments to the posts. Even if rules are framed, the Executive cannot be compelled to fill up any post if, having regard to exigencies of administration or reasons of economy, it chooses not to fill up the post. The right of an employee is to insist upon the compliance of the Rules of Recruitment when any post is in existence and that post is sought to be filled-up. No employee has a vested right to appointment to a post by way of promotion unless such post is sought to be filled up by promotion. The reasons which have prompted the Respondents in abolishing the post cannot be said to be arbitrary or capricious. The abolition of the post has been occasioned by the approval of the proposals for rationalisation of the working of the D.A.V.P. It is neither malafide nor intended to harm any individual.



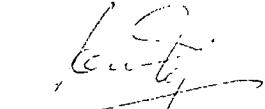
It is not directed against the applicant in particular.

3. Mr. Bapurao Pakhiddey, Advocate, relied upon the judgment of the Supreme Court in Union of India & Ors. Vs. Arun Kumar Roy, A.T.R. 1986 S.C. 61, paragraph 16, in which the Supreme Court held that "a notification has no statutory force. It cannot override rules statutorily made governing the conditions of service of the employees." This judgment, in our view, does not advance the case of the applicant, for no rule is sought to be ignored under the impugned order. Proposals for abolition of certain posts were made and the sanction for the abolition of posts is sought from the President, who had created the posts. The impugned order does not even remotely seek to amend or override any Rules so as to attract the dicta laid down by the Supreme Court in the above mentioned judgment.

4. This application is devoid of any merit and is, accordingly, dismissed.



(KAUSHAL KUMAR)
MEMBER
24.12.1986.



(K. MADHAVA REDDY)
CHAIRMAN
24.12.1986.