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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. No. 281/87.

DATE OF DECISION: February 2, 1990

L.C. Sharma Applicant.

Shri S.L. Lakhanpal Advocate for the Applicant.

V/s.

Union of India & Ors. Respondents.

Shri P.H. Ramchandani Advocate for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

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.

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

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the impugned order dated 2.1.1986, by which he was informed, with reference to his applications dated 24.9.85 and 11.12.85, the opinion of the Department of Personnel & Training to the effect that officers who are holding the post in the grade of Rs.425-800 cannot be considered as holding analogous post when they are considered for a post in the scale of Rs.550-900; has alleged discrimination and procedural lapses in the matter of recruitment to the post of Assistant Central Intelligence Officer Grade I (for short ACIO-I) in the Language Department of Intelligence Bureau; and has prayed for appointment as ACIO-I (Language) in Chinese in the Intelligence Bureau with effect from 1.7.1982 or from the date when the vacancies on the basis of a test conducted by the respondents' organisation in April, 1982 were filled up. He has also prayed that the

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Recruitment Rules, which were framed and implemented as late as 1982 be so amended as to provide equal opportunities to those similarly placed having been trained in a particular language proficiency and gained experience of the foreign language irrespective of their having holding a post in the ministerial or executive cadre.

2. The relevant facts, in brief, are that the applicant joined the Intelligence Bureau, Ministry of Home Affairs, Government of India, as an Upper Division Clerk on 6.4.1957. On his own initiative, he started learning Chinese language and took the preliminary examination conducted by the School of Foreign Languages, Ministry of Defence, New Delhi, in the year 1963. In 1963-64, he was sponsored by the respondents for the whole-time Interpretership Course conducted by the School of Foreign Languages, and passed the same in 1966. In 1969, he was again sponsored for the Chinese Advance Course in the Chinese Language conducted by the Army Education Corps Training College & Centre, Pachmarhi and successfully completed the same in 1970. He was promoted as Assistant in June, 1970 and continues to be an Assistant. His grievance is that he should have been posted to the post of ACIO-I (Language).

3. The main plea of the applicant is that of discrimination and thus violation of Articles 14 and 16 of the Constitution. In support of this, he has quoted names of a number of people from the ministerial cadre who were appointed to the above post. It is also pleaded that the post of Assistant in the grade of Rs.425 - 800 (pre-revised) is analogous to the post of ACIO-I in the scale of Rs.550-900 (pre-revised). Further, it is pleaded that he held the post of Field Officer equivalent to ACIO-I in the Aviation Research Centre under the Directorate Général of Security, Cabinet Secretariat, on deputation for about five years and this post was analogous to the post

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of ACIO-I in the Intelligence Bureau.

4. The case of the respondents is that the application is time-barred and that the applicant is not eligible to be posted by transfer on the post of ACIO-I in accordance with the Intelligence Bureau (Assistant Central Intelligence Officer Grade-I (Language)) Recruitment Rules, 1981 notified on 23.3.82.

5. We have perused the material on record and have also heard the learned counsel for the parties.

6. According to the above cited Recruitment Rules, the post of ACIO-I (Language) is to be filled 100% by transfer failing which by direct recruitment. For filling the post by transfer, it is prescribed that officers holding analogous posts and possessing qualifications prescribed for direct recruits from the Central Govt. Departments including the Intelligence Bureau, are eligible. The post is classified as belonging to Group 'C'. These Rules have come into effect from 23.3.82, i.e., the date on which they were issued, as per Rule 1 (2) of the Rules *ibid*. It is not in dispute that the applicant possesses the qualifications prescribed for direct recruits to this post. What is in dispute, however, is that, according to the applicant, the post of Assistant in the grade of Rs.425 - 800 (pre-revised) held by him is a post analogous to the post of ACIO-I (Language), which is in the scale of Rs.550 - 900 (pre-revised).

7. The criteria for determining whether a certain post can be treated analogous to another or not was laid down in the Department of Personnel & Administrative Reforms Office Memorandum dated 7.3.1984 (Annexure R-2 to the counter-affidavit). As per this O.M., three factors are crucial. Firstly, though the scales of pay of the two posts which are being compared may not be identical, they should be such as to be an extension of or a segment of each other. In the illustration given, it is mentioned that for a post

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carrying the pay scale of Rs.1200-1600, persons holding posts in the pay scale of Rs.1100-1600, and for a post in the scale of Rs.1500-2000, persons working in posts carrying pay scales of Rs.1500-1800 and Rs.1800-2000 will be eligible. In these illustrations, either the minimum or the maximum of the scales of the two posts are same. In the case before us, this is not so. The second condition is that both the posts should be falling in the same Group of posts as defined in the Department of Personnel and Administrative Reforms Notification No.21/2/74-Estt.(D), dated 11.11.1975. This is also not so in the case before us because admittedly the post of Assistant belonged to Group 'B' and that of ACIO-I (Language) to Group 'C'. Thirdly, the levels of responsibilities and duties of the two posts should also be comparable. This condition is also not fulfilled in the case before us inasmuch as the post held by the applicant belongs to ministerial cadre while the post to which he aspired is not a ministerial post and the responsibilities can also not be held to be comparable, even though the applicant has urged that these are so.

8. From the above, it is clear that the applicant is not entitled to be considered for appointment to the post of ACIO-I (Language) by transfer in accordance with the Recruitment Rules *ibid* and the criteria laid down by the Department of Personnel & Administrative Reforms for determining whether a post is analogous to another post or not. The plea of discrimination taken by the applicant is also not substantiated. He has cited a number of cases in which people from ministerial cadre were appointed to such a post, but has admitted at the bar that all those cases relate to period prior to the Notification of the Recruitment Rules. The applicant could not cite even a single case where an Assistant or a Clerk might have been

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appointed as ACIO-I (Language) in the Intelligence Bureau after the Recruitment Rules came into force.

9. The applicant has also taken the plea that when he was on deputation in the A.R.C., he was holding an analogous post and, as such, he should have been appointed as ACIO-I (Language) in the Intelligence Bureau by transfer. The respondents have taken the plea that the post held by the applicant on deputation cannot be said to be the post held by him. We agree with the contention of the respondents because the post held by him was that of Assistant in the grade of Rs.425 - 800 (pre-revised), on which he had a lien and he was not officiating on an analogous post in the cadre but was working on an ex-cadre post on deputation.

10. The applicant has also taken the plea that he was twice required to appear in a test for appointment to the post of ACIO-I (Language) in the Intelligence Bureau and that no test is prescribed in the Recruitment Rules. The respondents have stated that since the applicant was not eligible for appointment to the post of ACIO-I by transfer, as he did not hold an analogous post, he was given an opportunity to appear in a test held for direct recruitment, but the applicant did not avail of this opportunity. For direct recruitment to the post, obviously some screening is called for and the method of screening adopted by the respondents was a written test followed by viva-voce. The respondents were also prepared to recommend age relaxation in his case had he successfully competed in the test and viva-voce held for direct recruits. Thus, the action taken by the respondents was with a view to providing more opportunities to the applicant and no objection can be legally taken to such an approach.

11. The plea of the respondents that the application is time-barred also has some strength. Admittedly, he first

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represented on 22.5.85 and this was replied to by respondent No.2, vide Memorandum dated 12.6.1985 (Annexure A-5 to the Application). This is a speaking reply, which fully explains the reasons for not accepting his representation. The applicant's case, therefore, falls within Section 21(2) of the Administrative Tribunals Act, 1985 and this application has not been filed within the period allowed therein.

12. In view of the above discussion, we see no merit in this application, which is dismissed. Parties to bear their own costs.

Jomance
(J.P. SHARMA)
Member(J) 2.29.0.

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(P.C. JAIN)
Member(A)