

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

REGN.NO. D.A. 628/87

DATE OF DECISION: 23.9.92

Prem Prakash Kalra ... Petitioner.

Versus

Union of India & Anr. ... Respondents.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.  
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioner. ... Petitioner present  
in person.

For the Respondents. ... Shri P.P. Khurana,  
Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,  
Chairman)

The petitioner in this case joined as a Lower Division Clerk in the Ministry of Home Affairs with effect from 21.3.1967. After he passed U.D.C. grade examination he came to be promoted as U.D.C. on 29.8.1974. He came to be promoted as Assistant by an order dated 10.1.1983 w.e.f. 15.6.1982 on probationary basis. This order was modified by an order dated 4.7.1984 which gave him promotion from 17.12.1981 further stipulating that he shall be on trial for a period of two years from the date of his appointment as Assistant on long term basis. The petitioner's case is that he has satisfactorily completed the period of two years of trial and, therefore, he has become entitled for confirmation in the cadre of Assistants.

As those directly recruited to the cadre of Assistants even later than the petitioner have been confirmed in the substantive vacancies whereas the petitioner has not been given such right, he made representation on 19.2.1987 praying for confirmation of his appointment against a substantive vacancy after completing the period of trial. That request of the petitioner having been rejected by an order dated 11th March, 1987 (Annexure A-10), the petitioner has approached the Tribunal for appropriate relief.

2. The principal question for consideration is as to whether the petitioner is entitled to confirmation on the date on which he had completed two years of trial satisfactorily. We shall proceed for the sake of arguments that the petitioner has satisfactorily completed the period of trial.

3. The petitioner, who argued the case personally, submitted that there is no distinction between a probationer appointed in the direct vacancy and a promotee who is appointed on trial to the cadre of Assistants. He submitted that if on satisfactory completion of the period of probation a direct recruit becomes entitled to confirmation, such a right cannot be denied to a promotee on satisfactory completion of the period of trial. He further submitted that the promotees cannot be discriminated and a favourable treatment being given to the direct recruits.

4. It is necessary to point out that when we speak of confirmation, we really speak of appointment in a substantive vacancy. Substantive vacancies are fixed for each cadre. Rule 6(1) of the Central Secretariat Service Rules, 1962 (hereinafter referred to as 'the Rules') says that the authorised permanent strength of the various Grades of the service on the appointed day shall be as specified in the Third Schedule. In the Third Schedule, we find that the authorised permanent strength of Assistants' Grade for the Ministry of Home Affairs is specified as 426. Rule 13(6) of the Rules provides that fifty percent of the substantive vacancies in the Assistants' Grade in any cadre shall be filled by direct recruitment on the result of competitive examinations held by the Commission for this purpose from time to time and the remaining vacancies shall be filled by the substantive appointment of persons included in the Select List for the Assistants' Grade in that cadre. Therefore, number of vacancies for promotees is limited to 213. Such appointments shall be made in the order of seniority in the Select List except, when for reasons to be recorded in writing, a person is not considered fit for such appointment in his turn. Sub-rule(1) of Rule 15 of the Rules provides that every direct to the Section Officers' Grade of the Assistants' Grade shall initially be appointed on probation, the period of probation being two years from the date of appointment. Sub-rule(2) provides that every person other than a direct recruit shall,

when first appointed to a Grade, be on 'Trial' for a period of two years from the date of such appointment. Rule 16 of the Rules provides for confirmation of probationers, which reads as follows:

"When a probationer appointed to any Grade has passed the prescribed tests and has completed his probation to the satisfaction of the appointing authority, he shall be eligible for confirmation in that Grade. Until a probationer is confirmed under this rule or is discharged or reverted under Rule 17, he shall continue to have the status of a probationer".

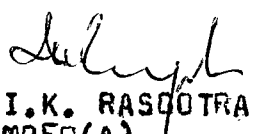
This is a specific rule for confirmation of probationers who are appointed by the process of direct recruits. There is no similar provision so far as the promotees to the cadre of Assistants' Grade are concerned. This distinction is clearly maintained for the reasons that direct recruitment of probationers is made for filling up of the substantive vacancies. There is no such statutory prescription so far as filling up of the posts by process of promotion to the cadre of Assistants' Grade is concerned. That is why it is provided in Rule 13(6) of the Rules that substantive appointment of promotees can be made only from the select list of the Assistants' Grade in accordance with the order of seniority. Hence, so far as the promotees are concerned, they would become entitled to confirmation against substantive vacancies only after their names are included in the select

list. It is not enough that their names are included in the select list. It is necessary that their turn for substantive appointment must come. Their turn would come when there is a substantive vacancy/in which the promotee whose name is included in the select list can be appointed in the substantive vacancy. It is, therefore, clear that mere satisfaction of the period of trial is by itself not sufficient to get secured substantive appointment in the cadre of Assistants' Grade. The first pre-requisite is that his name should be included in the select list of Assistants' Grade. The second condition depends upon the availability of vacancies meant for the promotees. So far as this case is concerned, it is the respondents' stand that the petitioner's name has not so far been included in the select list for the Assistants' Grade. There is no good reason to disbelieve the version of the respondents particularly when there is no material produced by the petitioner to show that his name has been included in the select list. Hence, we must hold that the petitioner's name has not yet been included in the select list of Assistants' Grade. It is thus clear that the petitioner could <sup>not</sup> earn substantive appointment merely because he has satisfactorily completed two years trial. As the petitioner has not fulfilled the essential condition as provided in sub-rule(6) of Rule 13 of the Rules, we would not be in a position to grant relief as prayed for by the petitioner. We would, however, like to

observe that it is obvious that it is the responsibility of the respondents to accord substantive appointment to the petitioner as and when his name is included in the select list and his turn comes within the range of substantive vacancies reserved for the promotees.

5. With these observations, this petition fails and is dismissed. No costs.

SRD  
240992

  
( I.K. RASGOTRA )  
MEMBER(A)

  
( V.S. MALIMATH )  
CHAIRMAN