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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

OA No.1024/90

New Delhi this the 5th Day of May, 1995.

Hon'ble Mr. N.V. Krishnan, Vice-Chairman
Hon'ble Dr. A. Vedavalli, Member (J)

1. Madan Gopal Dangri,
Assistant Architect,
Office of the Senior Architect I,
Department of Telecommunications,
13th Floor Devika Tower,
Nehru Place,
New Delhi.
2. B.D. Bhalla,
Assistant Architect,
Officer of Senior
Architect (Postal),
Department of Posts,
Dak Bhawan,
Parliament Street,
New Delhi.
3. Sh. R.G. Patankar,
Assistant Architect.

...Applicants

(By Advocate Sh. S.C. Saxena)

Versus

1. Union of India,
through Chairman,
Ministry of Communications,
Telecom Commission,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi.
 2. Sr. Dy. Director General (BW),
Department of Telecommunications,
20, Ashoka Road,
Sanchar Bhawan,
New Delhi.
 3. Dy. Director General (E),
Department of Telecommunications,
20 Ashoka Road,
Sanchar Bhawan,
New Delhi.
 4. Chief Architect,
Department of Telecommunications,
13th Floor Devika Tower,
Nehru Place,
New Delhi.
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5. Senior Architect II (Coordination),
Department of Telecommunications,
13th Floor, Devika Tower,
Nehru Place,
New Delhi.

...Respondents

(By Additional Standing Counsel Sh. M.K. Gupta)

ORDER

(Mr. N.V. Krishnan, Vice-Chairman (A))

By the impugned order dated 3.8.89 of the Ministry of Communications (Annexure A-5), the three applicants and 8 other persons in the grade of Architectural Assistant Grade-I were promoted to officiate as Assistant Architect Group 'B' gazetted on a regular basis from the date of issue of that order or the date on which they assumed charge of the post, whichever was later. The applicants are aggrieved by this order because they contend that they should be given regular promotion as Assistant Architect Group 'B' gazetted with effect from the date on which they had been given ad hoc promotion by the order dated 7.6.80 (Annexure A-2).

2. It is stated that in accordance with the Posts and Telegraph Department (Civil Engineering Wing) Architects (Gazetted) Recruitment Rules, 1973 (Annexure A-1) issued under the proviso to Article 309, the post of Assistant Architect is to be filled up 50% by promotion and 50% by direct recruitment. Likewise, the next higher post of Architect is to be filled up by promotion of Assistant Architects with 8 years of service in the grade after regular appointment, failing which alone by direct recruitment.

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3. The applicants apprehend that the posts of Architect are being sought to be filled up from sources other than promotion of Assistant Architects. Hence a prayer is also made to restrain the respondents from filling up the existing vacancies of Architect from any other post or source, other than by promotion of departmental Assistant Architects like the applicants.

4. The respondents have filed a reply in which they have explained the situation obtaining in the department. They have contended as follows:-

4.1 In so far as the ad hoc promotion is concerned, it is stated that there were 11 vacancies in the grade of Assistant Architect in 1980, of which 9 were in the direct recruitment quota. As the process of direct recruitment was time consuming, 9 Architectural Assistants, including three applicants, were given ad hoc promotion for one year or till such time regular arrangements were made.

4.2 In 1982, a new level of responsibility was introduced viz. Deputy Architect, in the Group 'A' junior time scale. It was also decided then to stop direct recruitment to the post of Assistant Architect for which the rules provided a 50% quota, as mentioned in para-2 above and instead to fill up all the posts by promotion of Architectural Assistants.

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4.3 A final seniority list of Architectural Assistant Grade-I was circulated in April, 1988 and a DPC was held on 3.8.89 to consider promotion to the rank of Assistant Architect. 11 persons were given promotion, including the three applicants vide Annexure A-5 order.

4.4 Thus, without further amendment of the rule, effect was given to the decision to fill up all the vacancies of Assistant Architect by promotion and no vacancies were kept reserved for direct recruitment.

4.5 The three applicants would qualify for further promotion to the rank of Architect only after rendering 8 years service after regular appointment, which would have been fulfilled by them only in 1997, as they were regularly promoted only on 3.8.89. However, for the purpose of reckoning the 8 years' service as Assistant Architect to make them eligible for promotion as Architect, it was decided to count the earlier ad hoc service also. Accordingly, the ad hoc service rendered from 1.7.80 in respect of the first applicant M.G. Dangri and from 1.7.81 in respect of other two applicants, was decided to be taken into account in October, 1992. Following that decision, the applicants have been given officiating promotion as Architects in November, 1992 by the Annexure R-1 order.

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4.6 The case of the Deputy Architects, the new cadre, was pending consideration all along. Ultimately, the Posts and Telegraph Building Works (Group 'A') Service Rules, 1994 framed under the proviso to Article 309 were notified on 15.7.94 (Annexure R-4) which ~~is~~ supersedes, among others, the Posts and Telegraph Department, (Civil Engineering Wing) Architect (Gazetted) Recruitment Rules, 1973 (Annexure A-1). These new Rules provide that the post of Architect which is in the senior time scale of Rs.3000-4500 will be filled up 50% from Deputy Architect with 5 years service and 50% from Assistant Architect Group 'B' with 8 years regular service in the grade. Therefore, the post of Architect will be filled up by considering both Deputy Architect and Assistant Architect in the ratio of 1:1, as provided in the Recruitment Rules.

4. 7 The applicants have already been promoted on an officiating basis as Assistant Architect in 1992. Their regular promotion as Architects would be considered in accordance with these recruitment rules. In the circumstances, the respondents contend that the applicants can have no grievance, which requires adjudication and hence the OA has to be dismissed.

5. We have heard the learned counsel for the parties who have reiterated the pleadings, as mentioned above.

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10. It is quite clear that the initial ad hoc appointment of the applicants as Assistant Architect was due to the fact that direct recruits were not available. They worked on an ad hoc basis for about 8-9 years. It is settled law ad hoc service rendered de hors the rules does not confer any benefit of seniority. If that ad hoc service had entirely been ignored in the peculiar circumstances mentioned above, there could have been a legitimate cause of action. That, however, is not the case. Even though the applicants have been promoted on a regular basis as Assistant Architect only from 3.8.89 (Annexure A-5), yet, for the purpose of reckoning the 8 years' regular service needed by them as Assistant Architect to make them eligible for consideration for promotion to the next higher rank of Architect, the respondents have already decided to include the ad hoc service rendered as Assistant Architects. This decision was taken in October, 1992 and immediately thereafter they have been given ad hoc promotion as Architect from 3.11.92. These follow the further decision taken by the Government to abolish direct recruitment to the post of Assistant Architect and to fill up these posts entirely by promotion of Architectural Assistants.

7. In the circumstances, the applicants cannot have a grievance that their ad hoc service has not been counted.

8. The respondents have created a new level of Deputy Architect in the lowest scale of the Group 'A' service. It was only appropriate that this

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new level, which is to be filled up entirely by direct recruitment should also be given a promotional avenue. Though this level was created as early as 1982 it has taken 12 years time to make provisions for them in the Recruitment Rules now notified on 15.7.94 (Annexure R-2). The arrangement made is that the senior time scale post of Architect will be filled up by two sources, viz. 50% by the Deputy Architects who are in the junior time scale and 50% by promotion from Assistant Architect like the applicants who are in Group 'B' Service. In our view, the applicants cannot claim that they alone should be promoted as Architects. With the introduction of a new cadre of Deputy Architect, it was open to Government to provide that the Deputy Architect could also be promoted as Architect to the extent of 50%.

9. In the circumstances, we are of the view that the prayer for a direction that the posts of Architect should be filled up only by promotion of Assistant Architect cannot be granted.

10. For the aforesaid reasons, we do not find any merit in the OA and accordingly it is dismissed. No costs.

A. Vedavalli
5/5/95
(Dr. A. Vedavalli)
Member(J)

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N.V. Krishnan
(N.V. Krishnan)
Vice-Chairman(A)