

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1288/90
T.A. No.

199

DATE OF DECISION 9.10.1990.Smt. C.P. Gupta~~Reporter~~ ApplicantShri G.D. GuptaAdvocate for the ~~Reporter~~ ApplicantUnion of India & Another
Versus

Respondent

Shri P.H. Ramchandani,

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative 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 it needs to be circulated to other Benches of the Tribunal? No

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, while working as Deputy Director of Training (Women's Occupation) in the Directorate General of Employment & Training under the Ministry of Labour, filed this application under Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by the act of the respondents in not absorbing her in the said post on regular transfer basis. The application was filed in the Tribunal on 28.6.1990. The Tribunal passed an ex parte interim order on 29.6.1990 restraining the respondents from reverting the applicant to her parent cadre as Superintendent. The interim order has thereafter been extended till the case was heard finally on 17.9.1990 and orders reserved thereon.

2. The case of the applicant in brief is that she was appointed as a School Social Worker in Child Guidance School Society and worked there from 1969 to 1971. Thereafter, from 1971 to 1973, she worked as Family Counsellor in the Family Life Institute which is a Government-aided institute. From 1973 to 1976, she has worked as Intake Assistant in Vocational Rehabilitation Centre for Physically Handicapped under the Directorate General of Employment & Training, New Delhi. From 1976 to 1980, she has worked as Rehabilitation Officer in the Vocational Rehabilitation Centre for Physically Handicapped. From 1980 to 1986, she has worked as Superintendent in the Vocational Rehabilitation Centre.

3. While the applicant was working as Supdt., the respondents issued a circular letter dated 12/19.3.1986 to the Chief Secretaries of all States/Union Territories regarding the filling up of the posts of Deputy Director of Training (Women's Occupation). There were two posts at New Delhi and one at Hissar to be filled up. The applicant, who applied for the said post, was selected by the U.P.S.C. and was thereafter, appointed by office order dated 20.4.1987 as Deputy Director of Training (Women's Occupation).

4. At the time of the appointment of the applicant as Deputy Director, recruitment to the said post was governed by the Directorate of Training (Class I and Class II posts) Recruitment Rules, 1971, as amended in 1977. The post of Deputy Director of Training (Women's Occupation) was required to be filled up by transfer on deputation (including short-term contract) or transfer, failing both, by direct recruitment. It was also stated therein that the selection on each occasion shall be made in consultation with the U.P.S.C.

5. The period of deputation of the applicant was extended from time to time, the last extension being upto 30th June, 1990, or till the selection of another officer on deputation was made by the U.P.S.C.

6. The respondents issued an advertisement in the Employment News of 1st August, 1987 regarding the filling up of two posts of Deputy Director of Training (Women's Occupation). The proposal was to fill up the posts by transfer on deputation or transfer basis. The applicant applied for the said post. When she did not receive any response, she wrote to the respondents on 27.4.1989 requesting them to apprise her of the action taken on her application. On 16.5.1989, the respondents wrote to the applicant stating that "The information as asked for by you, cannot be intimated in public interest".

7. On receipt of further representations from the applicant, the respondents informed her by their memorandum dated 11/13.9.1989 that it was decided not to go ahead with the recruitment proposed in the advertisement referred to by her.

8. The contention of the applicant is that she should have been absorbed in the post of Deputy Director of Training (Women's Occupation) on transfer basis, as was done in the case of three others - Miss Adarsh Sarvaria, Miss Devyani Sircar and Mr. P.A. Chakravorty - in 1977-78. All the three officers had been selected by the U.P.S.C. under the then recruitment rules and had been absorbed on transfer basis.

9. The Recruitment Rules were amended by notification dated 25.5.1989. Under the Amended Rules, the post of Deputy Director of Training (Women's Occupation) was

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required to be filled up by promotion to the extent of 66 $\frac{2}{3}$ % of the posts and failing that, by transfer on deputation, and 33 $\frac{1}{3}$ % on transfer on deputation basis and failing that, by direct recruitment.

10. After coming to know about the amendment of the recruitment rules, the applicant submitted a representation on 27.4.1989 to the effect that the new rules of 1989 did not apply to her as the post of Deputy Director of Training (Women's Occupation) to be filled up on transfer basis had existed prior to the coming into force of the new rules and had already been advertised. She reiterated that normally the persons who were selected through the UPSC even though on transfer on deputation basis, were permanently absorbed and in this connection, she referred to the three officers who were so absorbed, as mentioned above. Her contention is that once the vacancies had occurred prior to the coming into force of the Amended Rules and these had been decided to be filled up through advertisement issued in August, 1987, the same vacancies could not be filled up under the Amended Rules. The Amended Rules had only prospective operation. It was stated in the notification dated 25.2.1989 that it supersedes the old rules "except as respects things done or omitted to be done before such supersession".

11. The respondents informed the applicant by their memorandum dated 29/30 August, 1990 that recruitment to the post of Deputy Director of Training (Women's Occupation) is governed by the Amended Rules, 1989 which did not provide for appointment on transfer basis.

12. The respondents have contended in their counter-affidavit that the three officers whom were absorbed in the post of Deputy Director of Training (Women's Occupation) in 1978/81. According to them, the process of revision of the recruitment rules was initiated in 1983. They have admitted that the recruitment process was started in July/August, 1987 for filling up two vacancies of Deputy Director (Women's Occupation), but it was stopped in November, 1987 as the Directorate General decided not to fill the vacancies because the revision of the recruitment rules was expected to be finalised soon at that point of time.

13. We have carefully gone through the records of the case and have considered the rival contentions. The legal issue arising for consideration is whether the vacancy of Deputy Director of Training (Women's Occupation) in which the applicant was appointed in 1987, is to be filled up on a regular basis under the Unamended Rules or the Amended Rules.

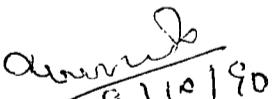
14. It will be noticed that the Amending Rules of 1988 did not contain any express provision giving the amendment a retrospective effect. Since the Amending Rule seeking to change the eligibility criteria for selection and appointment to the post of Deputy Director of Training (Women's Occupation) was not retrospective, we are of the opinion that it could not adversely affect the right of the applicant who was qualified for selection and appointment to the said post on the date of the occurrence of the vacancy in the said post, when the Unamended Rules held the field. There is ample authority in support of this conclusion. (vide Y.B. Rangaiah Vs. J. Srinivasa Rao,

AIR 1983 SC 852; P. Ganeshwar Rao & Others Vs. State of Andhra Pradesh, AIR 1988 SC 2065; and P. Mahendran Vs. State of Karnataka, AIR 1990 S.C. 405).

15. In the light of the above, we hold that the vacancies in the post of Deputy Director of Training (Women's Occupation) against which the applicant was appointed, shall be filled up in accordance with the provisions of the Directorate of Training (Class I & Class II Posts) Recruitment Rules, 1971, as amended in 1977 and not in accordance with the Amended Rules of 1989 which were notified on 25.2.1989. The applicant would be entitled to the same treatment as those who were absorbed in the post of Deputy Director of Training before the Amending Rules, 1988 were brought into force. The respondents are, therefore, directed to consider the absorption of the applicant in the same manner as Miss Adarsh Sarvaria, Miss Devyani Sircar and Mr. P.A. Chakravorty, who had been absorbed earlier. The applicant would also be entitled to all consequential benefits. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order.

There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member
9/X/1990


9/10/90
(P.K. Kartha)
Vice-Chairman (Judl.)