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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

PH OA 1363 of 1990

11.03.1994

Present: Shri G.D. Gupta, Counsel for the applicant.
Shri Dharam Pal Singh, Under Secretary on behalf of respondents.

It is reported that Shri P.P. Khurana who used to represent the respondents has now been taken off the panel. The departmental representative Shri Dharam Pal Singh is present. He seeks adjournment for one month so as to enable the State to engage another counsel. This is a Part Heard matter. We are not inclined to adjourn this case for one month, but in the interest of justice we adjourn the hearing of this case to 25.03.94. During this period, the respondents shall make arrangements to engage another counsel. List on 25.03.94 as Part Heard.

B.N.

(B.N. DHOUNDIYAL)
MEMBER (A)

S.K.

(S.K. DHAON)
VICE CHAIRMAN

SNS

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OA 1363/90

25.3.1994

Present: Mr G.D.Gupta, counsel for the applicant.

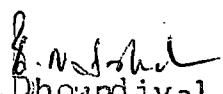
Mr V.S.R.Krishna, counsel for respondent No.1.


On 7.2.1994, Shri P.P.Khurana, Advocate represented respondents No.1 and 2. The Respondent No.1 is the Union of India and Respondent No.2 is the U.P.S.C.(the Commission). On that day, we directed the Commission to produce the relevant record. The matter was to come up on 9.3.1994. On 11.3.1994, a statement was made on behalf of the respondents that Shri Khurana has ceased to be a counsel for respondents No.1 and 2. We directed the respondents to make an alternate arrangement. The matter was directed to be listed on 25.3.1994. The matter has come up today before us. Shri V.S.R.Krishna states that he has instructions to represent Respondent No.1 alone. We direct him to contact the Commission and ensure the compliance of the order dated 7.2.1994.

List on 14-4-1994, on which date Shri Krishna will ensure the production of relevant record of the Commission.

The Registry is directed to supply to Shri Krishna a copy of this order and also of the order dated 7.2.1994.

/sds/


(B.N.Dhoundiyal)
Member(A)


(S.K.Dhaon)
Vice Chairman

Copy of order's dated 25/3/94
to the parties
Copy of order dated 7/2/94
is also issued to Sh. V.S.R. Krishna
Counsel for Res. No. 1 & 2

22.4.1994

None for the applicant.

Respondents through Sh.V.S.R.Krishna,Counsel.

Shri Krishna states that he has contacted the UPSC and the Chairman has accorded his permission to the official concerned to produce the relevant record. He prays for and is allowed two weeks' time .List on 9.5.1994 . On that day, the learned counsel shall ensure the production of the relevant record.

(B.N.DHOUNDIYAL)
MEMBER(A)

SNS

(S.K.DHAON)
VICE-CHAIRMAN(J)

Copy of order dated 25/5/94
to the parties annexed

Copy of order dated 7/2/94
is also annexed to the V.S. order
Counsel for Res. No. 142

Date

Office Report

Orders

DA 1363/70

24-05-94

Present: Applicant in person.
Sgt. V.S. R. Krishna, Command
for the respondents

A copy of the application

being knowledge by the Chairman, case,
has been given to the applicant who

appears in person. He brings the and
is granted a week's time to file a
reply. K.J.N. 01-06-94.

(B.O. D. H. O. D. I. V. A. L.)
MEMORANDUM

Wm
(S. K. D. H. A. M.)
WCA

R/S

Date	Office Report	Orders
		<p>0A-1363/90</p> <p>02.06.94</p> <p>Present : Sh. VSR Krishna, counsel for the respondents.</p> <p>Shri Krishnan states that he has received a copy of the counter-affidavit filed on behalf of the applicant to the application seeking privilege.</p> <p>Sh. Krishnan prays for four days time and is allowed to file a rejoinder-affidavit. List on 07.06.94.</p> <div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <p><i>B.N.</i></p> <p>(B.N. DHOUNDIYAL) MEMBER (A)</p> </div> <div style="text-align: center;"> <p><i>S.K.</i></p> <p>(S.K. DHAN) VICE CHAIRMAN</p> </div> </div> <p>/vv/</p> <p><u>08-06-94</u></p> <p>Sh. B. D. Gupta for applicant Sh. VSR Krishna for respondents 1-2 Sh. B. Joseph for respondent no. 3</p> <hr/> <p>Arguments of all the parties heard and concluded. Orders reserved. Record of the case filed.</p> <p>Hon'ble Mr. Justice S. K. Dhan, VC Hon'ble Mr. B. N. Dhoundiyal, Member</p> <div style="text-align: right;"> <p>AO</p> <p>Amiller</p> <p>CO CP</p> <p>AO</p> <p>Amiller</p> <p>AO</p> </div> <p><u>31-06-94</u></p> <p>Judgment pronounced</p>

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.1363 of 1990

New Delhi, this the 31st day of August, 1994.

Hon'ble Mr Justice S.K.Dhaon, Acting Chairman
Hon'ble B.N.Dhoundiyal, Member(A)

Dr.I.K.Bhatnagar,
S/O Shri Manohan Swaroop Bhatnagar,
R/O 1/193 Vikas Nagar,
Lucknow(UP) Applicant.
(through Mr G.D.Gupta for the applicant).

vs.

1. Union of India
through the Secretary to the Govt. of India,
Ministry of Culture,
Shastri Bhawan,
New Delhi.
2. Union Public Service Commission
through its Chairman
Dholpur House, Shahjahan Road,
New Delhi.
3. Dr.N.V.Nair,
Conservation Officer,
Office of the Director of Archaeology of Museums,
Govt. of Kerala, Trivendrum. Respondents.
(respondents No.1 and 2 through Mr V.S.R.Krishna
respondent No.3 through Mr E.X.Joseph).

ORDER
(delivered by Hon'ble Mr B.N.Dhoundiyal, Member(A))

The controversy in this case relates to the appointment to the post of Director N.R.L.C. on transfer on deputation basis. A Circular was sent in June, 1989 by the Ministry of Human Resources Development(Department of Culture) to all the Ministries, State Governments and other institutions notifying their requirement of an officer to man the post of Director N.R.L.C. on transfer on deputation basis. Six applications were received, including those of the applicant, Dr.I.K.Bhatnagar and Dr.Nair. After screening only Dr.Nair was called for the interview and selected.

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His selection was challenged by the applicant in the present O.A. on the ground that since Dr.Nair was not holding an analogous post carrying a pay scale of Rs.3700-5000, he was not eligible and the eligibility conditions were relaxed in his case. The applicant wanted a similar relaxation for being considered for selection to the post. The respondents denied that any relaxation was granted to Dr.Nair. In the order dated 1.4.1992, this Tribunal held that the applicant should also have been interviewed by the U.P.S.C. as ^{he} was equally qualified and eligible for the post, like Dr.Nair. The following directions were given:

" .. the application is disposed of with the direction to the respondents to hold a fresh selection for the post of Director, N.R.L.C., as the applicant has by now become eligible in all respects under the relevant recruitment rules. His suitability should be considered alongwith other eligible candidates. In case he is found suitable for appointment, he should be appointed to the post Director, N.R.L.C. The respondents shall comply with the above directions as expeditiously as possible and preferably within a period of six months from the date of communication of this order. We make it clear in case the respondents have already filled up the post by appointing Dr.Nair, his appointment will continue upto 30th September, 1992 or till fresh selection, as directed above, is finalised, whichever is earlier..."

2. An S.L.P. was filed by the respondents and

in their Judgment dated 22.1.1993, the Hon'ble Supreme Court ordered that the Tribunal had set aside the appointment of Dr.Nair without recording a finding on the correctness or otherwise of the submissions made by the parties. The operative of the Judgment reads as under:-

"For the above reasons, we set aside the judgment and order of the Tribunal, remit the matter back to the Tribunal for deciding the O.A. afresh, in accordance with law, after hearing the parties and on a consideration of the material on record. It is made clear that nothing said in the judgment shall be treated as an expression of opinion on the merits of the case. Whether Dr.Nair was eligible and whether Dr.Bhatnagar was entitled to an order of relaxation are matters for the Tribunal to decide hereinafter. Whatever we have stated above constitute merely the reasons for our order. It is further directed that ⁱⁿ pending the decision of the Tribunal/pursuance of this order Dr.Nair shall continue in the post of Director. His appointment to the said post shall of course be subject to the final orders that may be passed by the Tribunal in this matter.

3. In accordance with the directions of the Hon'ble Supreme Court, we have considered the matter afresh after hearing the parties and going through the material on record. We may first consider whether Dr.Nair was eligible to be considered for the post of Director, N.R.L.C. The Rules regulating the method of recruitment to the post of Director, N.R.L.C. were framed by the President under Article 309 of the Constitution and notified on 14.2.1994. The Schedule appended thereto shows that the post is to be filled-up by promotion/

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for

transfer on deputation (including short term contract, failing which by direct recruitment. The educational qualifications are the same for direct recruitment or promotion/deputation. Special conditions for promotion/deputation are as under:

" Promotion/Transfer on Deputation (Including Short Term Contract).

(1) Officers under the Central/State Govts./ Universities/Recognised Research Institutions/ Semi-Governments, Statutory or Autonomous Organisations:

- (a)(i) holding analogous posts, or
- (ii) with 5 years' service in posts in the scale of Rs. 1500-2000* or equivalent; and
- (b) possessing the educational qualifications and experience prescribed for direct recruits under Col. 8.

(2) The departmental Project Officer with 5 years' regular service in the grade will also be considered and in case he is selected for appointment to the post, the same shall be deemed to have been filled by promotion.

(Period of deputation/contract including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same organisation/ department shall not exceed 4 years.) "

These eligibility conditions were mentioned in the Circular dated 26.6.1989, inviting applications except that 5 years service was required in the revised pay scale of Rs. 3700-5000 instead of 1500-2000.

4. Dr. M. V. Nair was working as Conservation Officer in the State Government of Kerala.

The pre-revised scale of pay attached to the post was Rs. 1500-2685. In his bio-data Dr. Nair had indicated that the post, which he had been holding w.e.f. 23.3.1979 was in the un-revised pay-scale of Rs. 1500-2685. Since the corresponding

* stands revised to Rs. 3700-5000 after the 4th pay commission.

by

pre-revised scale of Rs.3700-5000 in the Central Government was Rs.1500-2000, Shri Nair was initially treated as eligible for the post. However, the Kerala Government revised the pay-scales and on the date of application, Dr.Nair was holding a post in the revised scale of Rs.2070-3650. When this matter was brought to the notice of the Ministry, it changed its earlier view and wrote to the U.P.S.C. that Dr.Nair did not appear to be eligible for the post of Director, N.R.L.C. A further examination of this matter in the U.P.S.C. showed that the Kerala scale of Rs.2250-3350 (two scales above Rs.1500-2685) was treated at par with senior scale of I.A.S. i.e. Rs.3200-4700 (revised) which is much lower than the scale of Rs.3700-5000. Thus, Dr.Nair did not appear to possess five years experience in the Central Scale of Rs.3700-5000 and was therefore, not eligible to be considered. Recourse was taken to para 5.2 of Directorate of Personnel and Training O.M.dated 7.3.1984 which states that it is quite likely that even posts with identical designations may not have comparable scales of pay and they may also differ with reference to the extent and stage of merger of D.A. with pay. Selecting authorities may have to be guided more by the nature of duties performed by the candidates in their parent organisation vis-a-vis those in the posts under selection, and qualifications and experience required for the post under the Central Government for making selection for appointments by transfer/deputation (including short-term contract) from outside the Central Government service. The U.P.S.C. took the nature of duties performed ^{by} Shri Nair as also his qualifications etc. into account and found Dr.Nair eligible for appointment to the post of Director.

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5. We have already noted that rules framed under Article 309 of the Constitution clearly indicate that the applicant must either hold an analogous post or must have served for five years in the scale of Rs.3700-5000 or equivalent and in the Circular dated 26.6.1989, inviting proposals for the post, this eligibility condition was clearly mentioned. A recourse to aforementioned O.M.dated 7.3.1984 was taken to declare Dr.Nair eligible even though the Ministry had clearly indicated in their letter dated 12.2.1990 that Dr.Nair was not eligible. This fact was brought to the notice of the Selection Committee, which was requested to take further clarifications in this regard from Dr.Nair during personal talks. The Selection Committee was to keep this in view, while making the selection. However, there is no indication that this question was examined by the selection Committee on 16.2.1990, when Dr.Nair was selected. In case, the essential eligibility condition of 5 years experience in grade of Rs.3700-5000 provided in the statutory rules was to be ignored and only the nature of duties and essential qualifications required for direct recruitment were to be taken into account, in the normal course either the respondents could have arrived at the conclusion that no eligible candidate was available for deputation on transfer. In that case they would have been perfectly competent to resort to direct recruitment. Alternatively, the Government had to exercise powers of relaxation given in Rule 5 of the recruitment rules. A similar relaxation should have also been given to other candidates. It is, therefore, clear that the Commission ignored the essential condition given in the statutory rules

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in holding Dr.Nair eligible for the post of Director N.R.L.C.

7. The other point to be examined is whether Dr.I.K.Bhatnagar, who was working as Project Officer in the Regional Conservation Laboratory Mysore, was also eligible to be considered for the post of Director N.R.L.C.Lucknow. The contention of the applicant was that if Dr.M.V.Nair was not eligible, he must have been granted relaxation. Once the criterion of analogous post or pay scale was given up, the Commission was considering only the educational qualifications and the experience and the nature of duties of the post held by the candidate. If this was so, it would only have been fair that the other candidates were also judged according to the same criterion and the condition of 5 years experience in a post in the pay scale of Rs.3700-5000 should have been waived for all. In that limited sense, the authorities had to consider the grant of relaxation to Dr.Bhatnagar also. It may also be noted that in the Circular ~~issued~~ inviting applications, there is no mention that the condition relating to the pay-scale is relaxable. Had this been indicated, perhaps many more candidates from different states would have been sponsored. We, therefore, hold that if the U.P.S.C. was considering the candidature of Dr.Nair irrespective of the fact whether he has held analogous post for five years or not they should have also considered whether relaxation could be granted to other candidates also. Being a seniormost Project Officer, Dr.Bhatnagar had an excellent chance to be selected. 6. On 13.7.1990, a Bench of this Tribunal had granted a stay order directing the respondents not to fill up the post of Director N.R.L.C. by

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transfer on deputation in pursuance of the Circular dated 20.6.1989. By another order dated 1.8.1990, this stay order was vacated but it was made clear that any appointment that may be made to the post of Director N.R.L.C. on deputation or otherwise will be clearly subject to the result of this application and the person who may be appointed should be informed accordingly. By an order dated 14.11.1990, Dr.Nair was appointed to the post of Director N.R.L.C.Lucknow on transfer on deputation basis for a period of four years with effect from the afternoon of 18.9.1990. This Tribunal on 1.4.1992 directed that Dr.Nair's appointment shall continue upto 30.9.1992 or till fresh selection is made, whichever is earlier. While remanding the case back to the Tribunal, the Hon'ble Supreme Court in its order dated January 22, 1993 directed that pending the decision of the Tribunal in pursuance of their order, Dr.Nair shall continue in the post of Director. It was also mentioned that his appointment would be subject to the final orders that may be passed by the Tribunal in this matter. Thus, Dr.Nair is continuing to hold the post of Director N.R.L.C. under protection of the orders of the Hon'ble Supreme Court. His term in any case would be over on 17.9.1994.

7. Due to above factors the whole exercise has become somewhat academic and no useful purpose will be served at this stage by setting aside the appointment of Dr.Nair. We direct the respondents to initiate the process for selection to the post of Director N.R.L.C. immediately considering alongwith

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other candidates, the candidature of the applicant in this O.A. As the whole process is likely to take some time, Dr. Nair shall be allowed to complete his term of four years. The only relief that can be given to the applicant is that in case he is selected he shall be granted at least two advance increments in the scale of Director to compensate him for the delay in the decision of this O.A.

8. With these observations, the O.A. is ^{3rd} disposed of. There will be no order as to costs.

B.N. Dhoundiyal
(B.N.Dhoundiyal)
Member (A)

/sds/

S.K. Dhaon
(S.K.Dhaon)
Acting Chairman