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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO: 1662 of 1990 Date of decision: 10.9.1990.

Smt. Mohini Srivastava ...Applicant

Versus

Delhi Administration through
Chief Secretary, Delhi and others ...Respondents

ADVOCATES

For the applicant Shri K.N.R. Pillay, Counsel
For Respondent No.1 Mrs. Avnish Ahlawat, Counsel
For Respondent No.2 Mrs. Raj Kumari Chopra, Counsel
For Respondent No.4 Shri Anis Sunjawardy, Counsel

CORAM : HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN
 HON'BLE MR. D.K. CHAKRAVORTY, MEMBER(A)

(JUDGEMENT OF A BENCH DELIVERED BY HON'BLE
MR. D.K. CHAKRAVORTY, MEMBER(A))

The applicant, who is working as Deputy Public Analyst in the Prevention of Food Adulteration Department of the Delhi Administration, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the proceedings initiated by the Union Public Service Commission for direct recruitment for the post of Public Analyst.

2. The application was filed in the Tribunal on 17.8.1990. On 21.8.90, when it was listed for admission and interim relief, a notice was directed to be issued to the respondents, returnable on 4.9.90. The Tribunal also passed an interim order to the effect that the respondents are directed not to act upon selection of Public Analyst that may be made by the Union Public Service Commission.

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3. On 4.9.90, the matter was heard and orders on the question of continuance of interim relief were reserved. While arguing on the question of interim relief, the learned counsel of both the parties have also dealt with the merits of their respective contentions. Respondent No.4 has also filed his counter-affidavit.

4. After going through the records of the case and hearing the learned counsel of all parties, we feel that this application could be disposed of at the admission stage itself and we proceed to do so.

5. The Delhi Administration through the Chief Secretary, Delhi is the 1st respondent. The Secretary Union Public Service Commission (hereinafter referred to as the U.P.S.C.) is the 2nd respondent. Shri C.D. Vashist, Deputy Secretary, Company Law Board, Deptt. of Company Affairs, New Delhi is the 3rd respondent. Dr. A.K. Nikam is the 4th respondent. Shri S.S. Gupta is the 5th respondent.

6. The Recruitment Rules for the post of Public Analyst were notified on 20.2.84 (vide annexure A-I, pages 14 to 17 of the paper book). There is only one post of Public Analyst. Similarly, there is only one post of Deputy Public Analyst. The Recruitment Rules provide the following method of recruitment to the post of Public Analyst, namely,

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"By promotion/transfer on deputation
failing which by direct recruitment"

7. According to the applicant, the Recruitment Rules envisaged the method of direct recruitment as the last resort and that it is incumbent on the respondents to consider the method of promotion failing which the method of transfer on deputation, in the first instance. If the post is filled by the method of direct recruitment, the chances of the applicant, who is working in the lower post of Deputy Public Analyst, for advancement in her career will be prejudicially affected. Even if she is not found eligible for promotion in accordance with the Recruitment Rules, her chances for promotion will not be marred if the post is filled by transfer on deputation as the deputationist will hold the post only for a period of 3 or 4 years.

8. Respondent No.4 has held the post of Public Analyst on deputation w.e.f.18.12.82. His initial period of deputation was 3 years but it was extended by one more year.

9. The applicant has stated ^{/that} the method of recruitment to the post of Public Analyst had been under consideration of the respondents in consultation with the U.P.S.C. She has drawn our attention to the correspondence exchanged between Delhi Administration and the U.P.S.C. at various times in support of ^{her} allegation that there has been mala fides at the lower level at both ends as a result of which the U.P.S.C. advertised the post of Public Analyst and conducted interviews on 21.8.90 and

22.8.90.

10. The learned counsel appearing for respondent Nos.2 and 4 (U.P.S.C. and Shri Nikam respectively) denied aforesaid allegations. They ~~_____~~ contended that the applicant herself was a candidate at the interview. She was interviewed on 22.8.90^Q and as she found that the going was not good in her case, she has approached this Tribunal. The learned counsel of the applicant, however, stated that the application was filed in the Tribunal before the U.P.S.C. conducted the interview.

11. The interim order passed by the Tribunal on 21.8.90 was served on the respondents on 27.8.90.

12. The learned counsel of respondent No.2 (the U.P.S.C.) stated that the U.P.S.C. had selected the candidates and that it was in the process^P of sending its recommendations to the respondents by the time the copy of the interim order was served on them.

13. We have carefully gone through the records of the case and have heard the rival contentions. As already observed, the question of filling up the post of Public Analyst had been under correspondence between the Delhi Administration and the U.P.S.C. The U.P.S.C. wrote to the respondents on 23.5.88 that since the Prevention of Food Adulteration Rules and the Recruitment Rules prescribe different qualifications, there was need for re-examination of the provisions of the Recruitment Rules. The U.P.S.C. also pointed out that if direct recruitment was made to the post of Public Analyst, which is the sole avenue for advancement for departmental officers, it is likely to block the chances of the departmental officers on a long term basis. In view of this,

the U.P.S.C wanted the Delhi Administration to propose amendments to the Recruitment Rules (vide annexure A-III, page 19 of the paper book).

14. On 13.6.89, the Delhi Administration issued to various sources of recruitment a circular letter regarding the filling up the post of Public Analyst on transfer on deputation basis. The applicant has alleged that on the persuasion by the 4th respondent, the 5th respondent (the Superintendent of the concerned department of the Delhi Administration) did not circulate the said letter to all the addressees and consequently it did not receive wide publicity. The advertisement was not issued in the 'Employment News'. In this background, the response to the letter was poor. Thereupon, the Delhi Administration approached the U.P.S.C. with a proposal for direct recruitment.

15. On 4.12.89, the U.P.S.C. wrote to the Secretary, Delhi Administration that notification in the 'Employment News' of the vacancies to be filled by deputation was mandatory and since this was not done, this course should be followed in the first instance. It was also added that "pending receipt of the above information/documents, no action is being contemplated on the proposal and the same is being treated as closed" (vide annexure A-V, page 24 of the paper book).

16. The Delhi Administration again took up the matter with the U.P.S.C. and requested for initiating the process of direct recruitment. The U.P.S.C. advertised the post, reversing their earlier stand.

17. Subsequently, the Delhi Administration,

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at various levels, have requested the U.P.S.C. not to proceed with the direct recruitment but this was not agreed to by them. In this context, the applicant had relied upon the letter dated 16.2.90 of the Joint Secretary, Delhi Administration addressed to the Secretary, U.P.S.C., the letter dated 23.4.90 of the Secretary (Medical) of the Delhi Administration addressed to the Secretary, the U.P.S.C., the letter dated 22.6.90 of the Secretary (Medical) addressed to the Additional Secretary, U.P.S.C. and the letter dated 18.7.90 of the Chief Secretary addressed to the Chairman, U.P.S.C. (vide annexures A-VI to A-XII, pages 29 to 35 of the paper book).

18. Mrs. Avnish Ahlawat, learned counsel appearing for the Delhi Administration, stated that there was not enough time to file counter-affidavit. She did not, however, dispute ~~the~~ the existence of the abovementioned correspondence ~~with~~ ^{between} the Delhi Administration and the U.P.S.C. in this regard.

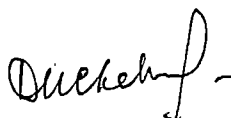
19. It is noticed that the U.P.S.C. had at an earlier stage raised objections to the post of Public Analyst being filled in by direct recruitment as they had felt that it would mar the promotion prospects of departmental candidates. The U.P.S.C. however, changed its stand subsequently. The Delhi Administration had also initially tried to fill up the post of Public Analyst by transfer on deputation. As this did not receive any good response, they had informed the U.P.S.C. to advertise the post. Thereafter, the Delhi Administration again reversed its stand and had written to the U.P.S.C. from the level of Joint Secretary to that of the Chief Secretary not to proceed with the direct recruitment. During the arguments, the learned

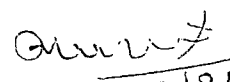
Counsel for the applicant also stated there is yet one more letter from the Lieutenant Governor addressed to the U.P.S.C. He could not, however, produce a copy of the same before us.

20. In the conspectus of the facts and circumstances of the case, we feel that the method of transfer on deputation provided ^{for} in the Recruitment Rules was not properly resorted to. The letter dated 18.7.90 from the Chief Secretary to the Chairman, U.P.S.C. refers to the proposal of the Delhi Administration to process the case of the departmental candidate for promotion reducing the length of service in the feeder grade from 8 years, in the Recruitment Rules. He had, therefore, requested the intervention of the Chairman, U.P.S.C. to withhold the process of direct recruitment. Despite this, the U.P.S.C. conducted interviews for direct recruitments.

21. In the interest of justice and fairplay, we remit the case to the Chief Secretary, Delhi Administration and the Chairman, U.P.S.C. to have further consultation in the matter and arrive at an appropriate decision. They should do so as expeditiously as possible but not later than 31.12.90. Till then, the interim order passed by the Tribunal on 21.8.90 directing the respondents not to act upon selection of Public Analyst that may be made by the U.P.S.C., will continue to remain in force.

22. The application is disposed of accordingly at the admission stage itself. There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER (A)
10/9/90


10/9/90
(P.K. KARTHA)
VICE CHAIRMAN