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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A.No.2108/90

New Delhi, this the 15th November, 1994.

HON'BLE MR. JUSTICE S.C. MATHUR CHAIRMAN

HON'BLE SHRI P.T. THIRUVENGADAM MEMBER (A)

1. Shri MM Arora
s/o Shri C.D. Arora
r/o 757, Baba Kharak Singh Marg,
New Delhi.

2. Shri R.L. Kapil,
s/o Late Shri Kundan Lal
r/o 1451/23, Gali Nai Wali,
New Delhi-5

..Applicants

(By Advocate Shri B.S. Charya)

Vs.

1. The Director,
Civil Defence-cum-Commandant
General, Home Guards &
Civil Defence, CTI Complex,
Raja Garden, New Delhi-27.

2. Delhi Administration,
5, Alipura Road, Delhi
(through its Chief Secretary)

3. Union of India,
Ministry of Home Affairs,
Government of India
North Block, New Delhi

(through its Secretary).

..Respondents.

(By Ms Rashmi proxy for
Mrs. Avnish Ahlawat, Advocate)

ORDER (Oral)

HON'BLE MR. JUSTICE S.C. MATHUR CHAIRMAN

The two applicants S/Shri MM Arora and R.L. Kapil have directed this original application to challenge the circular dated 17-7-90 (Annexure H) issued by the Deputy Commandant General, Home Guards-Deputy Director Civil Defence, Delhi to all Branch Incharges/Districts/C.D. Divisions.

2. The applicant's case is that he was appointed as Instructor Civil Defence which was in the feeder channel for promotion to the post of District Staff Officer. The said post was sought to be filled by promotion and accordingly the circular

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dated 17-7-90 was issued. This circular required the addressees to send applications of persons desirous to appear at the selection alongwith their bio-data through proper channel. In the circular the word 'promotion' has been used. From this it appears that one post of District Staff Officer was sought to be filled by promotion. The applicant approached the Tribunal and pleaded that the respondent was enlarging the zone of consideration and therefore his action was illegal.

3. In the reply ^{filed} on behalf of the respondent it has been asserted that the post is not proposed to be filled by promotion but it is proposed to be filled by direct recruitment for which the departmental candidates are also being considered and it is in that context that the circular dated 17-7-90 was issued. In the reply it has been pointed out that the strength of the cadre of District Staff Officer is only 9 and out of these 9 posts, 6 are already filled by promotion and 2 are filled by direct recruitment; accordingly there is only one vacancy and that belongs to the direct recruitment quota.

4. On the basis of the pleadings of the parties, two questions arise for consideration- (i) whether the post in question belongs to the promotion quota or the direct recruitment quota; and (2) whether the circular dated 17-7-90 suffers from any legal infirmity.

5. The respondents' assertion that the cadre of District Staff Officer consists of only 9 posts is not disputed by the applicant. In the rejoinder the applicant himself has indicated the manner in which the 9 posts are filled up. The averment made at page 2 shows that only 2 posts are filled

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by direct recruitment. Obviously the remaining 6 posts are filled by promotion. Admittedly, 2/3rd of the posts are to be filled by promotion and 1/3rd by direct recruitment. In view of the fact that 6 posts are already occupied by promotees there is no vacancy in the promotion quota. The contention of the respondent that there is only one vacancy in the direct quota is, therefore, substantiated.

6. In the present O.A. an interim order was passed earlier which was modified by order dated 26-11-90. The modified order is as follows:-

"In view of the contention of the respondents in their counter affidavit that the post which is to be filled in belongs to the direct recruitment quota, no appointment to this post will be made by the respondents by means of promotion in pursuance of their circular dated 17-7-90 (Annexure P.I). The process of appointment by means of direct recruitment, however, be initiated and completed."

The above interim order confirms with the defence raised on behalf of the respondents in the reply. We are inclined to confirm this interim order. By confirmation of this interim order the applicant gets no benefit as the applicant is not a candidate for direct recruitment.

7. In view of the above, we are of the opinion that the post in question does not belong to the promotion quota but belongs to the direct recruitment quota.

8. So far as the validity of the circular dated 17-7-90 is concerned, the learned counsel for the applicant is correct in submitting that

it does not reflect that the post was sought to be filled through direct recruitment. The circular does give ^{the} impression that the post is sought to be filled by promotion. However the use of word 'promotion' has been sufficiently explained in the rejoinder affidavit. Even on direct recruitment persons already in employment can be considered. Of course if they are selected and appointed they will not be treated as promotees but they will be treated as direct appointees. However, the incorrect use of the word 'promotion' in the circular does not vitiate the action of the respondents.

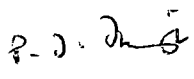
9. The learned counsel for the applicant then submits that there are different qualifications for appointment by direct recruitment and promotion. The learned counsel invited our attention to column No.7 of Annexure P.13 which is an extract from the recruitment rules. In column 7 of the rules the educational qualifications required for direct recruitment have been prescribed. In column 8 it is mentioned that the qualifications prescribed for direct recruitment shall be applicable to promotion also. Accordingly the statement of the learned counsel that different qualifications have been prescribed for direct recruitment and recruitment by promotion cannot be sustained.

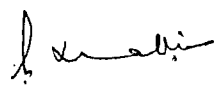
10. It was then submitted that persons occupying different posts in the feeder channel should have been considered for appointment to the vacancy. The learned counsel pointed out that there are several posts in the feeder channel which are mentioned in column 11 of the recruitment rules. The posts mentioned in column No.11 are Technical Assistant/Instructor (Civil Defence)/Junior Instructor (Home Guards)/Junior District Staff Officer/Platoon

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Commander in the scale of Rs. 425-700 with 5 years standing in the grade. In the impugned circular also all the five posts are mentioned. Accordingly by the argument of the learned counsel the circular cannot be faulted. ^{is next submitted that} ~~It~~ ^{it} was obligatory on the part of the respondents to bring all the facts to the notice of the Tribunal and having failed to do so, their action is vitiated. The relevant facts had already been brought to the notice of the Tribunal through the reply. Thereafter the respondents have been permitted to fill the post in the manner stated in the reply. After this there was no obligation on the part of the respondents to file any further reply as no such obligation had been cast by this Tribunal.

11. In view of the above, the application lacks merits and is hereby dismissed. However there shall be no orders as to costs.


(P.T. THIRUVENGADAM)
Member(A)


(S.C. MATHUR)
Chairman.

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