

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-2719/91

Date of decision: 12.3.1992

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Shri K.S. Malhotra Applicant

Versus

Union of India & Ors. Respondents

For the Applicant Shri R.K. Kamal, Advocate

For the Respondents Smt. Avnish Ahlawat, Advocate

CORAM:

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

The Hon'ble Mr. D.K. Chakravorty, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *No*

JUDGMENT

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

The applicant, who is working as Junior Staff Officer in the Central Training Institute under the Directorate of Civil Defence and Home Guards, Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

(i) To set aside and quash the impugned order

dated 13.11.1991; and

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(ii) to direct the respondents to consider him

for promotion to the post of Commandant,

E.I.T. w.e.f. 1.11.1991.

2. By the impugned order dated 11.11.1991, the Administrator, Union Territory of Delhi, appointed Shri S.S. Dagar, J.S.O.(HG) to the post of Commandant, C.T.I., in the pay-scale of Rs.3000-4500 plus usual allowances as admissible under the rules on purely ad hoc and emergent basis w.e.f. 1.11.1991 for a period of six months or till the post is filled on regular basis, whichever is earlier. It was also added that this appointment will not confer any right whatsoever for seniority or regular appointment to this or any other equivalent post in the Delhi Administration.

3. By way of interim relief, the applicant has prayed that the operation of the impugned order dated 11.11.1991 be suspended to avoid perpetuation of the gross violation of the rule of law.

4. After hearing both the parties, the Tribunal passed an order on 24.12.1991 holding that prima facie, the appointment of Shri Dagar should be treated as a stopgap arrangement to look after the current duties of the post of Commandant, in addition to his own duties as Junior Staff Officer and that the period of service rendered by him shall not count for the purpose of seniority. It will

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not also confer any other service benefits on him.

In case the respondents need to resort to ad hoc appointment of an officer as Commandant, it should be on the basis of the recommendations of a regularly constituted D.P.C. In that event, the D.P.C. shall not take into account the uncommunicated adverse remarks, if any, in the confidential reports of the applicant."

5. We have gone through the records of the case and have heard the learned counsel for both the parties at length. Shri Dagar, who has been impleaded as Respondent No.4, has not filed any separate counter-affidavit. The pleadings are otherwise complete but the application has not been admitted. We feel that it could be disposed of at the admission stage itself and we proceed to do so.

6. Both, the applicant and Shri Dagar, are working as Junior Staff Officers in the Directorate of Civil Defence and Home Guards. Under the existing Recruitment Rules for the post of Commandant, there is only one post and the same is to be filled by promotion, failing which, by transfer on deputation/re-employment, failing which, by direct recruitment. Junior Staff Officer, Central Training Institute, with 8 years' service in the grade, ^{applicant,} is eligible for promotion. According to the Shri Dagar is not so eligible. The respondents have contended that Shri Dagar is eligible for promotion under the proposed Recruitment Rules. α

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7. The learned counsel for the applicant has stated that on the retirement of the previous incumbent, the applicant had been given current duty of the post of Commandant w.e.f. 1.8.1984 and that the appointment of Shri Dagar as Commandant suffers from the vice of malice in law and is with a view to showing undue favour to him. This has been denied by the learned counsel for the respondents. According to her, the case of the applicant was also considered for ad hoc appointment as Commandant but was not given preference over Shri Dagar because of his indifferent service records. It has also been alleged that the applicant had been absenting himself from duty for the past 2½ years, that he has been defying the orders of his superiors in a wilful manner, that he has been drawing his monthly salary without attending to his official duties for the past 2½ years, and that his conduct on the above grounds is the subject matter of enquiry by an "impartial agency".

8. From the strict legal point of law, it is for the Government to decide whether the Recruitment Rules pertaining to a post requires amendment and, if so, on what lines, and a Court or Tribunal cannot interfere unless the amendment is violative of the provisions of Articles 14 or 16 of the Constitution. Likewise, it is for the Government to decide, as a matter of policy,

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whether or not a post which has fallen vacant should be filled, and if so, the timing of the same. In the instant case, the decision of the Government not to fill up the post of Commandant on a regular basis till the draft Recruitment Rules are finalised, cannot be faulted on legal or constitutional grounds. When the proposed Recruitment Rules are formally notified, any aggrieved employee may challenge its validity. In the instant case, that stage has not reached.

9. There is, however, force in the contention of the applicant that any ad hoc promotion made to a post should be in accordance with the Recruitment Rules in force and not on the basis of the proposed Recruitment Rules. According to the O.M. dated 30.3.1988 issued by the Department of Personnel and Training, "posts are to be filled as per eligibility conditions prescribed in the rules in force at the time of occurrence of the vacancies unless amended Recruitment Rules are brought into force with retrospective effect. In fact, the practice has been to give effect to amendments in the Recruitment Rules only prospectively, except in rare cases. Hence, regular appointment/promotions may be made in all such cases in accordance with the Recruitment Rules in force at the time when the vacancy arises. No ad hoc appointment/

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promotions may be made on the grounds that the Recruitment Rules are being revised or amended" (vide ATR 1989(1) Journal Section, page 21). The respondents have not stated that the appointment of Shri Dagar is in accordance with the existing Recruitment Rules and as such, it is not legally sustainable.

10. In the light of the above discussion, we dispose of the application with the following orders and directions:-

- (i) We hold that the appointment of Shri Dagar, Respondent No. 4, as Commandant on ad hoc basis on the basis of the proposed Recruitment Rules is not legally sustainable. In case, the respondent choose to fill up the said post on ad hoc basis pending the amendment of the Recruitment Rules, they shall follow the procedure envisaged in the O.M. dated 30.3.1988 issued by the Department of Personnel and Training and after the suitability of all the eligible persons, including the applicant, is considered by the Departmental Promotion Committee for Class I post and on the basis of the recommendations of such Committee.
- (ii) The respondents shall comply with the above directions, preferably within three months from the date of communication of this order.

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(b)

The interim order passed on 24.12.1991 will
continue to be in operation till then.

(iii) There will be no order as to costs.

D. K. Chakravorty 12/3/92
(D. K. Chakravorty)
Administrative Member

P. K. Kartha 12/3/92
(P. K. Kartha)
Vice-Chairman (Judl.)