

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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O.A.No. 2909/1991
T.A.No.

199

DATE OF DECISION: 30.07.1993

Shri Gulab Singh Mehra Applicant(s)

Versus

(For Instructions)

1. Whether it be referred to the Reporter or not? 45
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(9)

Regn.No. OA 2909/1991

Date of decision: 30.7.1993

Shri Gulab Singh Mehra ...

Petitioner

vs.

Union of India & anr. ... Respondents

For the Petitioner .. Sh.S.P.Sharma,
Counsel.

For the Respondents .. Sh.D.N.Goberdhun,
Counsel.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. S.R. ADIGE, MEMBER (A)

JUDGMENT(ORAL)

(of the Bench delivered by Hon'ble Mr. Justice
S.K. Dhaon, Vice Chairman)

The petitioner, a Senior Public Prosecutor
in the Delhi Administration has/ come with a grievance that
the circular issued by the Joint Secretary(Home)
Delhi Administration (Annexure 'C')
whereby it was proposed to fill up one post
of Public Prosecutor in the Directorate of
Prosecution, Delhi Administration, Delhi is
contrary to the provision of Section 24 of
the Code of Criminal Procedure, 1973 and hence
the same should be quashed.

2. A reply has been filed on behalf of
the respondents. In it, it is averred that
during the pendency of this OA, one

Shri A.P.Singh who was working as Chief Prosecutor was appointed to the post of Prosecutor in the Directorate of Prosecution.

3. A perusal of the order appointing Shri A.P.Singh indicates that the Delhi Administration was conscious of the fact that at the relevant time Shri Singh was working as Chief Prosecutor. However, for the reasons not discernible the order of appointment also indicates that Shri Singh had been appointed to the post of Public Prosecutor by transfer on deputation basis for a period of three years. The question to be examined is whether the appointment of Shri A.P.Singh is hit by Section 24 of the Code of Criminal Procedure, 1973. The said provision deals with numerous situations. We are concerned with sub-section (6) of Section 24 which provides, inter-alia that notwithstanding anything contained in sub-section(5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre. Under sub-section(5) no person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section(4). Sub-section(6), as we have seen, opens with a non-substantive clause. Therefore, it means that in spite of what has gone before, the said provision will operate on its own force. Sub-section(6), in plain language, means

that no one can be appointed either Public
Prosecutor or as an Additional Public Prosecutor
unless there exists a regular cadre of Prosecuting
Officers and he is a member of such a cadre.
Admittedly, as is evident from the perusal of
the order of appointment of Shri A.P.Singh,
he was a member of the cadre of Public Prosecutor.
It follows that in spite of the impugned
communication, the appointment of Shri Singh
was validly made in accordance with the
requirements of sub-section(6) of Section 24
of the Code of Criminal Procedure, 1973. It
is well settled that it is the pith and substance
and not the form which should be taken into
account while examining the legality of any
order or memorandum.

4. The impugned communication by itself
does not indicate that the appointment should
be made or can be made contrary to the provisions
of Section 24. We make it clear that no
appointment of Public Prosecutor shall take
place except in accordance with Section 24.
No further order is necessary at this stage.

5. The petitioner is not entitled to any
relief. The OA is dismissed but without any
order as to costs.

Anfolge
(S.R.ADIKE)
MEMBER(A)

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

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