

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No.679/91

DATE OF DECISION: 3-2-92

Shri Nikhil Kumar Guha .. Applicant

Vs.

Union of India .. Respondents

CORAM:

Hon'ble Shri Justice Ram Pal Singh, Vice-chairman(J)

Hon'ble Shri I.P. Gupta, Member(A)

PRESENT:

Sh.B.N.Singhvi, Senior Advocate with  
For the applicant .. Shri S.S. Tiwari

For the Respondents.. Shri K.C. Mittal  
Shri G.B. Gupta

- 1) Whether the reporters of local papers may be allowed to see the judgement.
- 2) To be referred to the reporter or not?

JUDGEMENT

(Delivered by Hon'ble Shri I.P. Gupta, Member(A))

This is an application filed u/s.19 of A.T. Act, 1985.

The applicant was promoted as Director Grade-II (Chemicals) on ad hoc basis with effect from 5-9-1983 on the recommendations of the Departmental Promotion Committee. He continued to hold the post without any break till 1-1-1986. The recommendations of the 4th Central Pay Commission came into effect from 1-1-1986. By a notification dated 8-5-1987, the post of Director Grade-I and II were merged and / or integrated and in place of two scales of pay, one ~~pay~~ revised <sup>pay</sup> scale was introduced. The distinction between Grade I and Grade-II was made to disappear and all were given the same scale of pay of Grade-I Director.

2. In this application, the applicant has requested for relief that the decision to fill the post by Direct Recruitment be quashed and the respondents be directed to fill the post according to the Recruitment Rules and consider the case of the applicant for promotion to the post of Industrial Adviser (Chemicals).

3. The Recruitment Rules for the post of Industrial Adviser

(chemicals) stipulate that the post would be filled by promotion, failing which by transfer on deputation and failing both by Direct Recruitment. For promotion, Directors Grade-I in the Chemical Division with five years of service in the grade are eligible.

4. The respondents first considered the question of filling the post by promotion. The vacancy had arisen from 1-1-1987 on the superannuation of the previous incumbent and in September, 1986, the respondents started considering the matter of filling the post when the vacancy occurred three or four months later. They found that there was no Director Grade-I (Chemicals) eligible for consideration for the post of promotion. Therefore, they set in process the second method of filling the post by transfer on deputation. Accordingly, the post was circulated by the Office Memorandum dated 19-9-1986 of the Department of Industrial Development. The UPSC after holding personal talk on 10-4-1989 with the candidates found none of them suitable for appointment to the post of the Industrial Adviser (Chemicals) on deputation basis. The respondents, therefore, resorted to the last method of filling the post by Direct Recruitment and the post was advertised in Employment News etc. dated 10-3-1990 and the last date for receipt of the application was 9-4-1990 (For applicants abroad and in the remote areas, the last date was 23-4-1990).

5. The Learned Counsel for the applicant contended that since the Grade-I and Grade-II of the Directors Post were merged on the recommendations of the 4th Central Pay Commission with effect from 1-1-1986 and since the applicant has been holding the post of Director Grade-II, though on ad hoc basis since 1983, he had put in five years of service for consideration for promotion. He also cited the case of C.B. Jakhetia Vs. UOI and another decided on 30-7-1988 by the Principal Bench, (OA No.471/88) where it was held that the relevant Rule merely requires 5 years service and not regular service, and hence ad hoc service should be counted for the purpose of determining the eligibility of the officer for promotion.

6. We have heard the Learned Counsel of either side in detail. The question here is not one of counting ad hoc service for purpose of determining the eligibility. The Recruitment Rules provide for 5 years experience as Director Grade-I. It was by

notification dated 8-5-1987 that the post of Director Grade-I and Director Grade-II were merged. Even if we count the period in regard to the applicant by stretching the matter that the recommendations of the 4th Central Pay Commission came into effect from 1-1-1986 and the 4th Central Pay Commission merged the scales of two Grades (Grade-I and Grade-II) the applicant did not have five years service, ad hoc or regular, as Grade-I or even in the merged scale of Grade-II and Grade-I, on the date when the vacancy arose i.e. 1-1-1987. Therefore, he was clearly ineligible. There was nothing wrong in the respondents action to attempt the second alternative of filling the post by transfer on deputation. That alternative having also failed, the respondents advertised the post on 10-3-1990. Even by then, the applicant had not completed 5 years service. By interim order dated 21-3-1991, it was directed that while the process of selection should continue, the result thereof should not be announced. The interim order has continued until further orders.

7. The plea of the Learned Counsel for the applicant was also that by 1-1-1991 the applicant has completed 5 years service and the process of Direct recruitment has not yet been completed; the respondents should fill the post by method of promotion. Besides, the applicant has even been performing the duties of Industrial Adviser and the action of the respondents in not considering his case, although, he fulfils the requisite qualifications and conditions now would be irregular and arbitrary.

6. We have seen the records produced by the learned counsel for the respondents for scrutiny by the Bench in pursuance of an order an MP filed by the learned counsel for the applicants for summoning the record. We agree with the contentions of the learned counsels that at the time when the post of Industrial Adviser (Chemicals) was decided to be filled by Direct Recruitment, the first two methods viz. promotion and failing which by transfer had been tried. But the two methods failed. No officer in the feeder cadre was eligible as on 1-1-1987 when the vacancy arose. It was decided to resort to last alternative method of direct recruitment on 4-12-1989 and the advertisement issued in March, 1989. In accordance with the Recruitment Rules, various methods had to be gone through step by step. Alternative methods here were i) By promotion, ii) Transfer ~~by~~ deputation and iii) by Direct Recruitment. Having seen that none fulfilled the eligibility criteria for promotion, the

second alternative of filling the post by transfer on deputation was set in motion on 19-9-1986. Once the second method was set in motion, this had to be tried and since this also failed, third method was resorted to and the respondents are not bound to re-open the question of filling the post by promotion without exhausting the third alternative method of Direct Recruitment.

9. In the conspectus of the above facts, the application is dismissed with no order as to costs.

I.P. Gupta  
(I.P. GUPTA) 3/8/92  
MEMBER(A)

Ram Pal Singh  
(RAM PAL SINGH)  
VICE CHAIRMAN(J)