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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH
NEW DELHI

O.A. NO. 728/1991

DATE OF DECISION September 26, 1991

Dr. Virender Pal Singh ... APPLICANT

-Versus-

Union of India & Others ... RESPONDENTS

Shri Shyam Babu, Counsel for the Applicant

Mrs. Rajkumari Chopra, Counsel for Respondents 1 & 2

Shri K. G. Mittal, Counsel for Respondent No.3

CORAM : HON'BLE MR. JUSTICE RAM PAL SINGH, V.C. (J)

HON'BLE MR. P. C. JAIN, MEMBER (A)

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JUDGMENT

Shri P. C. Jain, Member (A) :

The applicant who is posted as Assistant Director (Social Sciences) in the Central Hindi Directorate, under the Ministry of Education and Culture (Department of Education), New Delhi, has by this application under Section 19 of the Administrative Tribunals Act, 1985 assailed the action of the respondents, particularly the Union Public Service Commission (UPSC), respondent No.2, in not considering him eligible for promotion to the post of Deputy Director (Social Sciences). He has prayed for that — (1) the records of the case be called for and memo dated 13.3.1991 (Annexure-H to the OA) by which he was informed that his representation regarding promotion to the post of Deputy Director (Social Sciences) in the Commission for Scientific and Technical Terminology, could not be acceded to after consideration, be quashed; (2) that it be declared that he fulfils all

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the requirements for the aforesaid post of Deputy Director (Social Sciences) and the respondents be directed to convene a fresh DPC for consideration of his case for the above post as on October, 1990 when the last DPC met and promote the applicant to the said post on that basis; and (3) that all consequential benefits/reliefs which are admissible to him may be granted. Apart from the Union of India and the UPSC, the applicant has also arrayed as respondent No.3, one Shri O. P. Aggarwal, Assistant Director (Social Sciences) who is said to have been selected for the above post of Deputy Director.

2. All the respondents have contested the application primarily on the ground that in terms of the Recruitment Rules for the post of Deputy Director, the applicant is not eligible for consideration, and as such, he is not entitled to any relief. The applicant has filed a detailed rejoinder to the separate replies filed on behalf of the official respondents and by respondent No.3. We have carefully perused the material on record and also heard the learned counsel for the parties.

3. At the request of the learned counsel for the applicant that the case be finally disposed of at the admission stage itself, which request was not opposed by the respondents, we propose to pass final order in this case for its disposal at the admission stage itself.

4. In pursuance of advertisement No. 52 published on 25.12.1982 (Annexure-B to the OA), the applicant applied, was selected and consequently appointed on 17.8.1983 as Assistant Director (Social Sciences) in the

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Central Hindi Directorate, New Delhi. The notification of appointment is at page 23 of the paper book. The essential qualifications notified in the advertisement for recruitment to the aforesaid post of Assistant Director were as below :-

- "i) Master's Degree in Philosophy of a recognised University or equivalent.
- ii) Three years' experience of teaching degree classes or writing articles or books on translation or in both.
- iii) Should have studied Hindi and English upto degree level (Evidence to be furnished)." (Emphasis supplied)

The essential qualifications for the post of Deputy Director (Social Sciences), i.e., the post under consideration, in accordance with the Recruitment Rules notified under Article 309 of the Constitution on 15.3.1977, in supersession of the 1963 Recruitment Rules, and as amended from time to time, particularly notification dated 2.5.1981, are as below :-

"(B) For the post of Deputy Director (Social Sciences)

- (i) Master's degree in Sociology or Psychology or Philosophy or Education or Economics or Political Science or History or Archaeology or Cultural Anthropology or Library Science or Home Science or Commerce or Business Management or Social Work or Law or Public Administration or Military Science or Journalism of a recognised University or equivalent (According to the requirements of the post).
- (ii) Should have studied Hindi/Sanskrit as an Optional or compulsory subject at degree level (Evidence to be furnished). (Emphasis supplied)
- (iii) 5 years' experience of the principles of evolution of terminology or lexicography or translation work or compilation of encyclopaedia, Dictionaries or original writing of books in Hindi.

Note:1: Qualifications are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified.

Note:2: The qualification regarding experience is relaxable at the discretion of the Union Public Service Commission in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes if at any stage of selection, the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them."

5. The applicant got the Degree of Bachelor of Arts from Agra University in 1973. A copy of the certificate filed by him shows that (1) General English, (2) Philosophy, (3) Economics, and (4) Political Sciences were his subjects during the Bachelor of Arts Degree examination. He obtained the Degree of Master of Arts in Philosophy in 1975. He also obtained Degree of Bachelor of Education in 1976. He did his Doctor of Philosophy in 1980. The applicant contends that he got all these degrees/qualifying the above mentioned examinations through Hindi Medium, and that Degree of Bachelor of Arts "also clearly indicates that the applicant had studied compulsory Hindi at the degree level". This later portion of the contention would need a somewhat detailed examination which we propose to do in the later part of this judgment. He further claims that three articles written by him in Hindi have already been published by various journals, and that "manuscription of book on Philosophy and research thesis are waiting for publication". He states that all the above said work done by him is in Hindi. The main case of the applicant is that the essential qualification prescribed for the post of Assistant Director (Social Sciences) and for the post of Deputy Director (Social Sciences), in so far as these relate to the knowledge/study of Hindi are the same and if he has been found eligible, selected and finally appointed to the

post of Assistant Director, he cannot be considered ineligible for the post of Deputy Director. He goes on to state that if the UPSC was satisfied that he had fulfilled the eligibility conditions under the Recruitment Rules for the post of Assistant Director (Social Sciences) as he had studied Hindi upto the degree level, the applicant is also deemed to have studied Hindi at the degree level, which is the condition of eligibility for the post of Deputy Director (Social Sciences). According to the applicant, there is no difference between the expression 'upto degree level' or 'at degree level', and that a candidate who had studied Hindi upto the degree level is bound to have studied Hindi at the degree level. He even goes to the extent of saying that if the UPSC at the time of his recruitment to the post of Assistant Director was satisfied seeing his qualifications that he had studied Hindi upto the degree level, certainly he must have studied Hindi upto degree level as a subject. His other contention spelt out in his rejoinder is that the UPSC while selecting him for the post of Assistant Director "had given a representation to the applicant in view of the Recruitment Rules for the post of Assistant Director and Deputy Director that the applicant fulfils the qualifications and eligibility conditions for promotion as Deputy Director (Social Sciences). The applicant acted on the basis of this representation and applied and got selected for the post of Assistant Director (Social Sciences). On this representation and belief that the applicant fulfils the eligibility criteria for the post of Deputy Director (Social Sciences), the applicant got himself recruited to the post of Assistant Director (Social Sciences) on the basis of the aforesaid representation that he would

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be promoted as and when his turn comes. Now the respondents, particularly the U.P.S.C. are stopped alleging that the applicant does not fulfil the eligibility criteria for the post of Deputy Director." Still another contention is, and which has also been made in the rejoinder, that the eligibility criteria fixed for the post of Hindi Officer in the Ministry of Railways advertised by the UPSC is : -

"Master degree of a recognised University or equivalent in any subject with Hindi medium and English as a subject at degree level."

It is further contended that he qualifies for the above post, which is a Group 'A' post. On that basis he has argued that it looks surprising that he is eligible for the post of Hindi Officer, a Group 'A' post, but he has not studied Hindi as optional/compulsory subject at the degree level. He contends that the respondents have been hyper-technical while interpreting the Recruitment Rules for the post of Deputy Director.

6. The respondent No.3, who is said to have been selected for the post of Deputy Director and, according to the statement of the learned counsel for the official respondents, at the bar, has already been appointed to the said post, in his return has emphasised that as the applicant never took Hindi as an optional or compulsory subject in his degree course, he is not eligible, in terms of the Recruitment Rules, for consideration for promotion to the post of Deputy Director. He has also stated that the entry in the B.A. Degree to the effect that "the candidate possesses knowledge of compulsory Hindi", as mentioned in the Hindi version of the Degree is not the

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the correct position inasmuch as according to the English version of the form of Degree, the position in this regard is that "the candidate possesses knowledge of compulsory elementary Hindi". In his rejoinder the applicant has stated that the English translation is not correct. Respondent No.3 has gone to the extent of saying that if according to the applicant qualifications required for the post of Assistant Director and Deputy Director in so far as the study of Hindi is concerned, are equivalent, in that event the appointment of the applicant as Assistant Director itself would be void as the applicant did not possess the requisite qualifications even at that point of time, and if for any concession or because of any mistake of fact, the applicant was considered and appointed as Assistant Director then the same cannot be or to fulfil the requisite qualification taken to be valid qualification for the post of Deputy Director (Social Sciences), in that event he would pray that the appointment of the applicant to the post of Assistant Director may be declared null and void ab initio. In any case, according to him, the selection of the applicant as Assistant Director will not give him a right to claim or will have the effect of amending the Recruitment Rules for the post of Deputy Director (Social Sciences) in so far as the study of Hindi as optional or compulsory subject at the degree level as one of the essential qualifications is concerned. He further states that the degree issued by the Agra University only certifies that the applicant possesses knowledge of compulsory elementary Hindi which is required to be studied at the level of Matriculation and not beyond.

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7. The official respondents in their return have primarily emphasised that the applicant was ineligible for consideration for promotion to the post of Deputy Director (Social Sciences) and that the aforesaid post was not reserved for any Scheduled Caste candidate. They have further stated that the impugned memo dated 13.3.1991 which is only a reply to his representation cannot legally be quashed, and that the Tribunal has no jurisdiction to lay down special educational criteria and declare that the applicant fulfils the same even though he does not possess it; further, it is beyond the purview of the Tribunal to direct the respondents to promote the applicant since promotion is not a matter of right.

8. We have carefully considered the rival contentions of the parties to the case. We may first determine whether the applicant possesses the minimum essential qualifications prescribed in the Recruitment Rules which are statutory in character, for the post of Deputy Director (Social Sciences). The only dispute in this regard is about the qualifications relating to Hindi. From a perusal of the relevant rule which we have already reproduced above, in our opinion, it cannot be disputed that as per the requirement of rules either Hindi or Sanskrit should have been either an optional or compulsory subject at the degree level. The applicant in his entire pleadings has nowhere stated that he had taken Hindi or Sanskrit either as optional or compulsory subject as a part of his Bachelor of Arts Degree. The B.A. Degree itself shows, as already stated by us above, that Hindi was not one of his subjects in the B.A. Degree course. It is, therefore, clear that in terms of the Recruitment Rules

the applicant did not possess one of the essential qualifications prescribed for recruitment to the post of Deputy Director (Social Sciences). It is pertinent to note that he has not challenged the vires of the relevant Recruitment Rules nor has prayed for quashing the same.

9. The next point for consideration is whether the mention in the B.A. Degree about knowledge/competence of compulsory Hindi can be taken to be equivalent to the provisions in the Recruitment Rules on this point. The applicant has filed as Annexure A-1 only the Hindi version of his B.A. Degree. In this version following two statements are printed :-

"परीक्षाथी ने अंगिवारी हिन्दी में कोई संपर्क नहीं
प्राप्त की।"
परीक्षाथी को अंगिवारी हिन्दी की अभियान
प्राप्त है।"

The first of the above two provisions has been scored out in the copy of the Degree filed. This shows that the applicant did not appear in any examination for compulsory Hindi. Respondent No.3 in his return has stated that "it appears that the applicant has purposely concealed the original Degree issued by the Agra University. It is submitted that the original Degree issued by the Agra University are in Hindi as well as in English on the reverse side of the same sheet." He has also filed as Annexure R-3B and R-3C copies of Degree issued in Hindi and also in English in respect of one (Kumari) Daizy Asthana for the examination year of 1976. The English version has the following :-

"The Candidate also passed in Compulsory Elementary Hindi."

The Candidate possesses knowledge of Compulsory Elementary Hindi."

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In this copy of the Degree the first provision has been scored out. From this it is clear that these entries pertain to compulsory elementary Hindi and not compulsory Hindi. This itself makes a significant difference. Neither party has filed any other evidence on the point whether these entries pertain to compulsory Hindi or compulsory elementary Hindi. If the applicant himself had filed also the English version of his B.A. Degree, the exact position in his case would also have become equally clear. On the basis of material on record before us we are not in a position to hold that the applicant possessed knowledge of "compulsory Hindi" and not only "compulsory elementary Hindi". Even for compulsory elementary Hindi the applicant did not take examination any ~~class~~ and as such he is rightly stated not to have passed any such ~~class~~. Knowledge of compulsory elementary Hindi, in our view and on the basis of the material before us, cannot be said, by any stretch of imagination, as equivalent to a regular subject in the B.A. Degree course.

10. We may now take up the plea of the applicant that the respondents, particularly the UPSC, are estopped from pleading that the applicant is not eligible for consideration for the post of Deputy Director (Social Sciences). Firstly, this contention has no basis in law, and such a contention could be justifiably be raised only if it could be held that the qualifications in this regard for the post of Assistant Director and for the post of Deputy Director are equivalent. The language of the Recruitment Rules on this point is quite clear and the two provisions cannot be said to be identical or similar or having the same effect. In that event, the applicant's selection for the post of Assistant Director cannot raise any claim of estoppel for recruitment.



to the post of Deputy Director. Even though the applicant has contended, and that too in his rejoinder, that after seeing the Recruitment Rules for the post of Assistant Director and Deputy Director the UPSC while selecting him for the post of Assistant Director had given a "representation" to him that he fulfils the qualifications and eligibility conditions for promotion as Deputy Director (Social Sciences), yet he has not produced any evidence whatsoever to substantiate this contention. Moreover, there could have been ^{no} occasion for the UPSC to consider the recruitment rules for the post of Deputy Director at the time of selecting the applicant for the post of Assistant Director. In his rejoinder the applicant appears to convey that it was after the "representation" referred to above that he applied for the post of Assistant Director. There is nothing on record to substantiate such an impression. Even otherwise, it will be totally illogical to presume that the UPSC had considered the Recruitment Rules for both the posts and made any "representation" to the applicant even before he had applied for the post of Assistant Director. We find no grounds whatsoever in the case which might attract the doctrine of promissory estoppel.

11. For the post of Assistant Director also, one of the essential qualifications was study of Hindi and English upto degree level. The applicant has not stated at all that he actually studied Hindi upto degree level. In such a situation how can he be deemed to have taken Hindi as an optional or a compulsory subject in the degree level. The mere fact that he was selected even

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though he had not studied Hindi upto degree level for the post of Assistant Director would not legally create any vested right for any claim to the post of Deputy Director in violation of the statutory Recruitment Rules. The post of Assistant Director against which the applicant was selected was reserved for Scheduled Caste candidates. The Recruitment Rules for that post provided the power to the UPSC to relax the qualification in its discretion. Though it cannot be said clearly that the applicant's selection as Assistant Director was in relaxation of one of the essential qualifications, yet it may not be totally out of place, on the facts and in the circumstances of the case, to draw a presumption or an inference that the applicant's appointment even to the post of Assistant Director may have been in relaxation of the qualifications in view of the clear fact that he never studied Hindi upto degree level. Using Hindi as a medium for various examinations is not the same as studying Hindi as a subject. Hindi as a subject would have not only the knowledge of script but also its grammer, literature etc. While knowledge of Hindi grammer may have been used in using Hindi as a medium for various examinations, the knowledge of Hindi literature cannot be presumed a part thereof. In the process of judicial review, the Tribunal cannot and should not amend the Recruitment Rules which have statutory force; the Tribunal could have considered the contentions of the applicant if the vires of the rules had been challenged. ~~and if the contentions were~~ ~~and if the contentions were~~ As already stated, the vires of the rules have not been challenged. We also cannot place ourselves in the seat

of the UPSC to exercise any powers of relaxation of the rules which under the statutory Recruitment Rules vest with ix/the UPSC.

12. The applicant has also raised the plea that respondent No.3 who has been selected for the post of Deputy Director is junior to him in the cadre of the post of Assistant Director and that he had also been awarded an adverse entry. In determining the question of eligibility in terms of the relevant rules, the inter se seniority comes into the picture only in respect of candidates who are otherwise eligible. Moreover, the post of Deputy Director being a selection post, even if a senior person is eligible, he may not be selected in comparision to his junior who may have comparatively better merit.

13. In support of his contention that too technical a view should not have been taken by the respondents in the matter of eligibility of the applicant for promotion to the post of Deputy Director (Social Sciences), the learned counsel for the applicant cited the judgment of the Supreme Court in the case of Uma Shankar Sharma vs. Union of India — AIR 1980 SC 1457. In that case, the condition prescribed was that the applicant should have been a sportsman who has represented his University in an Inter-University Tournament conducted by the Inter-University Sports Board. It was not in dispute that the applicant qualified and was selected for representing the University in the Inter-University Tournament, but he fell ill and as such could not participate. The fact that he fell ill, and for that he was unable to represent his University, was also not

in dispute, and there was nothing to show that but for that illness he would not have actually taken part in the Tournament. Their Lordships of the Supreme Court in that case held as below: -

"It seems to us that on a reasonable view of the facts the appellant should be taken to have fulfilled the condition of eligibility. Terms in addition of service are intended to be construed reasonably, and too technical a view can defeat the essential spirit and intent embodied in them. The intention was to appoint meritorious sportsmen to the posts, and that object is served if a person who had qualified and was selected for representing his University in an Inter-University Tournament conducted by the Inter-University Sports Board is appointed, notwithstanding that he was actually prevented from participating because of reasons beyond his control."

The above cited case does not help the applicant at all.

In the cited case the applicant was eligible and was selected; the only thing which was missing was that for reasons beyond his control he had not actually participated in the Inter-University Tournament. On the other hand, in the case before us the applicant is not even eligible in terms of the relevant Recruitment Rules which have a statutory force, and which, as pointed out by us above, have not been challenged.

14. The eligibility of the applicant for the post of Hindi Officer is not at all relevant for deciding the issue raised in this O.A.

15. In the light of the foregoing discussion, we are of the considered view that no interference from the Tribunal is called for in the present case. The O.A. is accordingly dismissed leaving the parties to bear their own costs.

Q. U. 24/9/1991
(P.C. JAIN)
Member(A)

Ram Pal Singh
(RAM PAL SINGH)
Vice Chairman(J)