

8

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

O.A.NO.917/91

DATE OF DECISION : 25.11.91

DR. G. GOPALA RAO

...

APPLICANT

- VERSUS -

UNION OF INDIA & ORS.

...

RESPONDENTS

APPLICANT IN PERSON

RESPONDENTS THROUGH SHRI N. S. MEHTA, SR. STANDING COUNSEL

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

HON'BLE MR. I. P. GUPTA, MEMBER (A)

J U D G M E N T

{ Hon'ble Mr. I. P. Gupta, Member (A) }

In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has been working as Deputy Agricultural Marketing Adviser (Dy.AMA) on ad hoc basis from 31.1.1983 to 19.2.1985 and from 20.2.1985 onwards on regular basis. The applicant has requested for following reliefs :-

(a) for quashing the publication dated 2-8 February, 1991 in Employment news circulating the vacancy of Joint Agricultural Marketing Adviser (MFPO) in the Directorate of Marketing & Inspection (DM & I) amongst various departments for recommending officers for transfer on deputation from amongst officers under the Central Government/State Governments/recognised Research Institutions/Public Undertakings/Atonomous/Semi-Government or Statutory Organisations holding analogous post;

*Laundry*

(9)

(b) for directing the respondents to revise recruitment rules to fill up the post of Jt. AMA (MFPO) by promotion;

(c) to direct the respondents to promote the applicant on the basis of draft recruitment rules.

2. The applicant strenuously argued and brought out the following issues :-

(i) when the recruitment rules for the post of Jt.AMA (Meat Food Products Order) were under consideration in 1984, there was only one post of Dy. Agricultural (Poltry, Live Stock and Live Stock Products) in the Live Stock Division. For promotion to higher post in the senior grades, there should be adequate number of posts, i.e., not less than three, in the feeder cadre, and, therefore, post of Jt.AMA (MFPO) could not be made a promotional post earlier for the solitary post of Dy.AMA (PL & LP);

(ii) the respondents have agreed that based on the recommendations of the Fourth Pay Commission, the number of posts of Dy.AMA in Live Stock Division be increased from one to four and, therefore, the number of posts in the feeder category is now adequate for making the post of Jt.AMA (MFPO) a promotional post;

(iii) the Agricultural Marketing Adviser to the Government of India, DM & I has proposed that the method of recruitment to the post of Jt.AMA in Live Stock Division should be made promotional;

*Ramdhani*

(iv) the Hon'ble Supreme Court has ordered on several occasions that provision for promotion increases efficiency of the public services while stagnation reduces efficiency and makes the service ineffective. In this connection he has cited several cases such as -

Dr. Ms. O. Z. Hussain vs. Union of India :  
ATR 1990 (1) SC 437;

CSIR & Ors. vs. K. G. S. Bhatt & Ors. : AIR 1989  
SC 1972 (ATR 1989 (2) SC 341);

Raghunath Prasad Singh vs. Home Deptt. : 1988  
Supp. SCC 519;

Bhattacharya Committee (as cited in Joginder  
Singh & Ors. vs. Union of India : (1989) 11 ATC  
474, New Delhi Bench);

(v) the recruitment rules for the remaining three posts of Jt.AMA provide for 100 per cent by promotion as a method of recruitment;

(vi) the Sub-Committee appointed by Jt. Secretary (A) has recommended that the post of Jt.AMA (MFPO) may be filled by promotion.

3. The applicant submitted a representation on 22.6.1987 requesting for revision of recruitment rules and the respondents informed him that the question of revision was under active consideration. The applicant again submitted another representation on 16.3.1988 and the representation was

*Lambly*

forwarded by respondent No.2 to respondent No.1 stating that the direct recruit selected for the post of Jt.AMA (MFPO) has not joined so far even after two years of his selection. Thus the method of deputation and direct recruitment have not been successful to fill the post. The applicant has been pursuing the matter by subsequent representations.

4. The learned counsel for the respondents mentioned that on the recommendations of the 4th Pay Commission, the Government revised the pay scale of the post of Senior Marketing Officer (Gr. II - Live Stock and Live Stock Products) equivalent to the pay scale of the post of Dy.AMA and re-designated the post as Dy.AMA (Gr.II) w.e.f. 1.1.1986. Thus the number of the posts in the Live Stock Division increased from one to four (i.e., three posts of Dy.AMA (Gr.II) and one post of Dy.AMA (PL & LP)). The revised recruitment rules for the cadre to give effect to the merger of these two cadres are yet to be finalised by the Government. As such, as on the date the recruitment rules for the post of Dy.AMA (PL & LP) only exist. The cadre of Dy.AMA (Gr.II) will come into existence only after the recruitment rules for the post are finalised and notified by the Government in the gazette.

5. The learned counsel for the respondents has also brought out in the counter that the suggestions made by the DM & I were considered by a small group of officers comprising the representatives of the Directorate and the Ministry and the views expressed were divergent. It was considered that the Ministry should process the proposals for revising the recruitment rules up to the level of Dy.AMA only and continue the existing recruitment rules for the post of Jt.AMA and

*Santhya*

Jt.AMA (MFPO). It has been further pointed out in the counter that the rules for the post of Jt.AMA (MFPO) were notified on 3.11.1984. The post remained in abeyance between 1985 and 1987. The rules were reviewed and amendments were notified on 27.7.1987. These can be revised again only after giving them a fair trial which has not been done so far.

6. The main contention of the learned counsel for the respondents was that the rules framed under Article 309 of the Constitution in regard to recruitment to the post of Joint Agricultural Marketing Adviser (MFPO) provide for filling the post by transfer on deputation (including short term contract) failing which by direct recruitment. These are statutory rules and the advertisement in the Employment News has been done with a view to inviting applications for filling the post by deputation according to the statutory rules.

7. Analysing the facts and issues mentioned above we would like to point out that the terms of service of a Government servant are governed by statute or statutory rules which may be even unilaterally altered by the Government without the consent of the employee. In this connection para 6 of the Hon'ble Supreme Court's judgment in Roshan Lal Tandon & Ors. vs. Union of India & Anr. (AIR 1967 SC 1889) would also refer. It is not left to the Tribunal to direct in what way the recruitment rules should be framed. In the circumstances the claims of the applicant for directing revision of recruitment rules, quashing of notification in regard to the filling of the post in accordance with the rules and for giving consequential benefits cannot be agreed to.


*Handwritten signature*

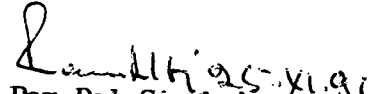
13

6

8. The arguments of the applicant, however, have weight and we do hope that the respondents would give due consideration to them and also take early steps for finalising the recruitment rules for the post of Dy.AMA (Gr.II) and reconsideration of recruitment rules for Jt.AMA (MFPO).

9. With the above observation the application is disposed of with no orders as to costs.

  
( I. P. Gupta )  
Member (A)

  
( Ram Pal Singh )  
Vice Chairman (J)